

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 MICHAEL MCMAHON, ET AL.,

7 Defendant.
8 -----x

21-CR-265 (PKC)

United States Courthouse
Brooklyn, New York

June 7, 2023
9:00 a.m.

9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE PAMELA K. CHEN
11 UNITED STATES DISTRICT JUDGE
12 BEFORE A JURY

11 APPEARANCES

12 For the Government:

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25 produced by computer-aided transcription

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8 BY: KEVIN K. TUNG, ESQ.

9 * * * * *

10 (In open court; Jury not present.)

11 THE COURT: Good morning. Have a seat everyone.

12 We're going to go on record now. Good morning
13 everyone. A couple of issues. One is I understand we have an
14 issue, Mr. Tung, with you not -- well, you refusing to pay for
15 the transcript. You have to pay for the transcript. This is
16 the same thing I told Mr. Goldberger yesterday.

17 MR. TUNG: Your Honor, it is actually not what I
18 don't want to pay for the transcript because my client has to
19 pay for the transcript. He told me he didn't have the money.
20 He does not work. He didn't have the money, your Honor.

21 THE COURT: Who is paying your fees?

22 MR. TUNG: He pay me a flat fee, which will be less
23 than the transcript, your Honor. But he didn't pay me
24 anything now. It was for that kind of flat fee. He's not --
25 I mean, this man is not working, doesn't have money. And we

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1 didn't order, we didn't order the transcript.

2 THE COURT: Right, but I require everyone to have it
3 because what happens is, when the jury goes back for their
4 deliberations they will ask for or they often ask for portions
5 of the transcript to be sent back to them. So the parties
6 have to get the transcript and most of the time they want it
7 on an instantaneous basis so it can be used during closings or
8 for other purposes, but certainly we need it at the time of
9 the jury deliberations so that everyone can get together and
10 decide what should be sent back to them.

11 MR. TUNG: But --

12 THE COURT: The only potential solution, I suspect,
13 is your client has to file an affidavit as to his indigence
14 and perhaps I can get CJA funds to pay for his portion of the
15 transcript.

16 Ms. Wong, I don't know if your client is in the same
17 situation.

18 MS. WONG: Your Honor, my client is in the same
19 situation and if we have the ability -- he's not currently
20 working. Prior to this trial he was a clerk at a bubble tea
21 establishment. He simply cannot pay for these transcripts.

22 THE COURT: Well, who is paying for your fees then?

23 MS. WONG: Family members. And, again, this is on a
24 flat fee basis.

25 THE COURT: All right. They'll both have to fill

PROCEEDINGS

1 out financial affidavits with the Pretrial Services office and
2 they're going to have to be approved, even though they have
3 retained counsel for CJA funding, and then in which case their
4 share of the transcript, just the cost on the transcript can
5 be paid out of the CJA funds. All right. But the court
6 reporters will be paid in full for the transcripts by all
7 parties.

8 The cost is being shared, I gather, amongst four I
9 guess different parties, the government and the three
10 defendants, correct?

11 MR. HEEREN: That's right, your Honor.

12 THE COURT: All right. We'll take care of that.

13 So talk to Ms. Gonzalez to clarify that process.
14 She advises me that the attorneys have to provide the form to
15 their clients to fill out and then submit it to Pretrial
16 Services, Fida, or --

17 THE COURTROOM DEPUTY: Submit it to you to review to
18 see --

19 THE COURT: I get the affidavit?

20 THE COURTROOM DEPUTY: Yes, because they are not
21 getting counsel.

22 THE COURT: Off the record.

23 (Discussion off the record.)

24 THE COURT: So that's one issue.

25 The second one has --

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1 MR. HEEREN: Your Honor, just very practically, I
2 would just note for defense counsel, the financial affidavit
3 can be found on the EDNY website. They can get it directly
4 themselves.

5 THE COURT: Thank you. It's under I think CJA,
6 right?

7 MR. HEEREN: Yes, it's titled CJA 23 Financial
8 Affidavit. If they Google it, it's the first thing that pops
9 up.

10 THE COURT: Thank you.

11 The second issue is one for you to consider how to
12 address and that has to do with Alternate Number One. He has
13 advised Ms. Gonzalez that he has been diagnosed with gout, I
14 gather in one of his legs.

15 THE COURTROOM DEPUTY: His right foot.

16 THE COURT: His right foot. He suggested that that
17 should be a basis to excuse him from jury service.

18 Ms. Gonzalez appropriately tried to probe him as to why his
19 current condition would justify his being excused from the
20 jury. He's apparently on medication for it now but, as I
21 think Ms. Gonzalez pointed out to him, he'll have the gout
22 wherever he is, whether it's at home, here in the courthouse
23 or back at work, if he goes back to work, and he hasn't -- and
24 we'd be willing to make an accommodation of letting him sit
25 not in the jury box but in one of the seats right near the

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1 jury box in the event that he needed to elevate his foot. But
2 thus far he hasn't made any such requests. It just seems to
3 us that he perhaps wants to use it as an excuse to get off the
4 jury.

5 We can question him, and that would be my
6 preference, during a break outside the presence of other
7 juries, so that his complaints, I guess for lack of a better
8 word, are on the record, but I think unless he says something
9 radically different than what he told Ms. Gonzalez, there is
10 really no basis to excuse him, but obviously you folks can
11 make that judgment for yourselves after you hear from him
12 directly. So we'll take that up probably during the first
13 break or maybe at the beginning of the lunch break.

14 So we're going to go ahead and get the jury.

15 (Jury enters courtroom.)

16 THE COURT: Please be seated, everyone.

17 Good morning, ladies and gentlemen of the jury, I
18 hope you had a good night last night. We are now going to
19 resume the examination of the witness by the government.

20 Mr. Heeren.

21 MR. HEEREN: Thank you, your Honor.

22 (Witness takes the witness stand.)

23 **HONGRU JIN**, called as a witness, having been previously first
24 duly sworn/affirmed, was examined and testified further as
25 follows:

H. JIN - DIRECT - MR. HEEREN

1 DIRECT EXAMINATION (Continued)

2 BY MR. HEEREN:

3 Q Good morning, Mr. Jin. Good morning, ladies and
4 gentlemen.

5 A Good morning.

6 Q Mr. Jin, we ended the day yesterday I believe with you
7 looking at and identifying Government's Exhibit 501 which you
8 identified as night vision goggles; is that correct?

9 A Yes.

10 MR. HEEREN: And, your Honor, may I publish by
11 passing around the night vision goggles to the jury?

12 THE COURT: You may.

13 (Exhibit published.)

14 MR. HEEREN: Can we please show the witness for
15 identification Government's Exhibit 440B.

16 THE COURT: Just for the witness and the parties.

17 Q Do you recognize Government's Exhibit 440B?

18 A I do.

19 Q What is this?

20 A It's a receipt from the hotel check-in.

21 Q For the check-in at what hotel?

22 A Edison. It's a Manhattan hotel.

23 Q How do you recognize it?

24 A It's with my initial and email address and also a
25 signature.

H. JIN - DIRECT - MR. HEEREN

1 MR. HEEREN: The government moves to admit
2 Government's Exhibit 440B into evidence.

3 MR. LUSTBERG: No objection.

4 MS. WONG: No objection.

5 MR. TUNG: No objection.

6 THE COURT: Admitted. You may publish.

7 (Government Exhibit 440B, was received in evidence.)

8 (Exhibit published.)

9 MR. HEEREN: Ms. McMahon, if you could please blow
10 up the first half of the exhibit. That's perfect. Thank you.

11 Q So now that the jury can see it, this is a hotel receipt
12 with your initials on it; is that right?

13 A Yes.

14 Q And the initials are depicted on the right-hand side of
15 the exhibit where I've circled?

16 A Yes.

17 Q And if you look at the top left, the guest name is Lan
18 Tu?

19 A Yes.

20 Q And is that Tu Lan's name but in the western style with
21 the family name last?

22 A Yes.

23 Q And the arrival date was April 6th, 2017?

24 A Yes.

25 Q Where did you say this hotel was?

H. JIN - DIRECT - MR. HEEREN

1 A In Manhattan, New York.

2 Q Can you please tell us about how -- tell us about this
3 event, how did you come to bring Tu Lan to the Edison Hotel in
4 Manhattan?

5 A Well, on April 6 we finished the surveillance job and in
6 the morning I took Tu Lan to shopping, to go to New Jersey
7 shopping center and then when we finished that I was given the
8 address to go to this hotel.

9 Q Did Tu Lan in fact check in into that hotel?

10

11 A Yes.

12 Q After you checked Tu Lan into the Edison Hotel, what, if
13 any, further involvement did you have in this?

14 A No, not me.

15 Q What did you do at that point after that?

16 A After I sent Tu Lan back to the hotel in Manhattan, my
17 job is finished. I return home.

18 Q Did you have any further involvement with Tu Lan after
19 that?

20 A No.

21 MR. HEEREN: I want to direct your attention back to
22 what's been previously admitted as Government's Exhibit 807F.
23 I believe starting on the bottom of page 13, Ms. McMahon,
24 going on to page 14. Great. All right, starting on page 13
25 if you can just blow up the three bubbles so that we can see

H. JIN - DIRECT - MR. HEEREN

1 them?

2 Q Mr. Jin, do you see these messages were dated April 5th,
3 2017?

4 A Yes, I see it.

5 Q And for the record, do you still have Government's
6 Exhibit 807A, the original Chinese language version of these
7 chats to aid your testimony?

8 A Yes.

9 Q And so in these messages you say that, I am here.

10 You ask Zhu Feng to return the call when it is
11 convenient for you.

12 And then Zhu Feng asks you to find an opportunity to
13 take several pictures. Do I have that right?

14 A Yes.

15 Q Turning to the next two. You then send a picture and a
16 message. What did you send the picture of?

17 A Photo of the house that's being surveilled.

18 MR. HEEREN: Ms. McMahon, can you just blow up the
19 picture of the house a little bit bigger.

20 Q And in this picture fair to say it's dark?

21 A Yes.

22 Q What do we see in the portion of the picture at
23 approximately the middle where I've circled?

24 A Okay, it's a door with a light on and above it there is a
25 window.

H. JIN - DIRECT - MR. HEEREN

1 Q Was that one of the doors to the home that you were
2 surveilling?

3 A Yes.

4 MR. HEEREN: You can close that up. Then if you can
5 blow up the message.

6 Q Is this an audio message that you sent to Zhu Feng after
7 you took that picture?

8 A Yes.

9 Q And what were you trying to convey to Johnny Zhu at that
10 point?

11 A I told him that it was very dark. Also I turn on the
12 flashlight, it still -- the picture still in that effect and
13 cannot see it very clearly, so that's what I told Zhu Feng.

14 MR. HEEREN: All right, now turning to the next page
15 of the exhibit, page 15 please, Ms. McMahon. If you just blow
16 up the first two messages on the page for us.

17 Q So on April 5th, 2017, a little bit before 11 p.m., you
18 text Zhu Feng, The private detective has left.

19 Is that right?

20 A Yes.

21 Q What did you mean by that?

22 A Like I said yesterday, I saw a vehicle at that home, the
23 previous day, so that vehicle already left.

24 MR. HEEREN: You can take that down now. You can
25 take the whole exhibit down.

H. JIN - DIRECT - MR. HEEREN

1 Q I want to play for you a portion of what's been
2 previously admitted as --

3 MR. HEEREN: One moment, your Honor -- 804. I'm not
4 sure if it's A or B, the audio recording. One second.

5 For the record it's 804B, which I believe has been
6 previously admitted into evidence.

7 Q And what I would like to do, Mr. Jin, I want you to
8 listen to this recording and then I'm going to ask you a few
9 questions. I'm going to play only a portion of it.

10 (Audio recording played.)

11 (Audio recording stopped.)

12 Q Mr. Jin, were you able to hear Government's Exhibit 804B?

13 A Yes, I did.

14 Q Do you have any knowledge of how that recording came to
15 be?

16 A I do not.

17 Q Do you have any knowledge of where it's from or who made
18 it?

19 A No, I'm not sure.

20 Q Do you recognize the voices of anyone on that recording?

21 A I heard that most of the time Zhu Feng was the speaker in
22 the recording.

23 Q And did you hear another voice as well?

24 A Yes.

25 Q Were you able to recognize that person's voice, or no?

H. JIN - CROSS - MR. LUSTBERG

1 A I think it was Tu Lan.

2 MR. HEEREN: One second, your Honor.

3 No further questions, your Honor.

4 THE COURT: Thank you, Mr. Heeren.

5 Cross-examination, Mr. Lustberg.

6 MR. LUSTBERG: Thank you, your Honor.

7 MR. HEEREN: We're going to take a moment to switch
8 our interpreters.

9 THE COURT: Thank you, Ms. Wu.

10 You may inquire, Mr. Lustberg.

11 MR. LUSTBERG: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. LUSTBERG:

14 Q Good morning, Mr. Jin.

15 A Good morning.

16 Q You pled guilty to being an agent of the Chinese
17 government, correct?

18 A Yes.

19 Q And you knew that you were acting as an agent of the
20 Chinese government because Johnny Zhu, Zhu Feng, told you that
21 you were working for the Chinese government, right?

22 A Yes.

23 Q And in fact, you were present and involved in a meeting
24 where the whole surveillance operation was planned at the
25 Embassy Suites, correct?

H. JIN - CROSS - MR. LUSTBERG

1 A I'm not sure whether I was there for the entire meeting.
2 However, for the audio recording that was played earlier,
3 during that time I was there.

4 Q And you were there and Johnny Zhu was there and Tu Lan
5 were there, correct?

6 A Yes.

7 Q The private investigator was not there, correct?

8 A That should be the case.

9 Q Well, when you say that should be the case, what you mean
10 is, that is true, that the private investigator was not there,
11 am I right?

12 A What I was expressing was, when I was there the private
13 detective was not there; however, when I was not around I'm
14 not sure whether he was there or not.

15 Q I understand.

16 Now you were told in a text message that this
17 operation was supposed to be carried out secretly, correct?

18 A Yes.

19 Q And, for example, you were told that you had to buy SIM
20 cards so that you could use phones that could not be
21 associated with your name; is that right?

22 A Yes.

23 Q And you were also told what to say if you were ever
24 caught, that you were supposed to say that you were just a
25 tour guide, right?

H. JIN - CROSS - MR. LUSTBERG

1 A Yes.

2 Q And, in fact, when you originally were caught, you did
3 exactly that, you told the FBI that you were just acting as a
4 tour guide, right?

5 A That's what I told the two FBI agents when I was at my
6 home during the first inquiry.

7 Q And that was, again, what Johnny Zhu had told you to say
8 if you were ever caught, right?

9 A Yes.

10 Q And you were also told that you should -- at one point
11 you were told that you should delete all the chats that you
12 had, right?

13 A Yes. Zhu Feng, Johnny Zhu, send me a message saying that
14 I should delete all the record of the communications and all
15 the WeChat messages.

16 Q But just going back to the meeting now at the Embassy
17 Suites, that meeting, during the time that you were there, was
18 about planning the surveillance that would take place,
19 correct?

20 A Yes.

21 Q And you were doing that planning with in mind the fact
22 that Johnny Zhu had done surveillance of the same people
23 before, correct?

24 A That should be the case but I'm not very sure because
25 when he did the surveillance before I was not there.

H. JIN - CROSS - MR. LUSTBERG

1 Q Okay.

2 MR. LUSTBERG: I just want to -- to make it easy a
3 little bit easier if we could, Ms. Conti, just call up
4 Exhibit 704A, which is in evidence, page 6. Page 6, please.

5 Q I want to read you, Mr. Jin, one section that you were
6 asked about yesterday and ask you what you understood that to
7 mean.

8 Johnny Zhu says: I tried this angle with Captain Hu
9 last time. If you don't park on this road, there are trees
10 around his house here, here and here. If you don't park at
11 this opening, or this opening, or this opening, you will see
12 nothing from anywhere else. Or if you want to watch from this
13 road you have to park in front of this house. From this house
14 everything is blocked and you will not see anything.

15 Do you remember Johnny Zhu saying that?

16 THE INTERPRETER: Counsel, can you please blow it
17 up.

18 THE COURT: Can you enlarge it for the translator.
19 Thank you.

20 A I remember.

21 Q And that indicates, doesn't it, that Johnny Zhu had been
22 there to surveil that residence before, even though you
23 weren't there, right?

24 A Yes.

25 Q Okay. Anyway, at that meeting you learned that there was

H. JIN - CROSS - MR. LUSTBERG

1 also a private investigator who was involved; is that correct?

2 A Yes, I know that.

3 Q And as you said before, he was not there at that meeting
4 when you were there, correct?

5 A Yes.

6 Q And, in fact, you never met the private investigator, did
7 you?

8 A As I mentioned yesterday, I saw him at the bakery,
9 however, I did not greet him or do anything else.

10 Q So you never spoke to him, correct?

11 A No.

12 Q But you heard about him at the meeting at the Embassy
13 Suites, correct?

14 A Yes, indeed.

15 Q Do you remember -- actually let me just again, to make it
16 a little bit easier, if we could call up again, this is page 3
17 of Exhibit 704A, which is in evidence, page three.

18 Here's my question: You remember that at that
19 meeting that you heard a reference to Mike and you understood
20 that to be the private investigator, right?

21 A Yes.

22 Q And in the middle -- well, for purposes of the jury and
23 counsel, in the middle of the page there is a reference where
24 it says -- Tu Lan says: Whomever Mike is I'm not going to
25 worry about those stuff.

H. JIN - CROSS - MR. LUSTBERG

1 Do you know what -- what did you understand Tu Lan
2 to mean when she said, whomever Mike is?

3 MR. HEEREN: Objection, your Honor.

4 THE COURT: Hang on a second. Overruled.

5 Let me just say, clarify it a little bit, do you
6 have any understanding of what Tu Lan meant?

7 A My understanding is this: At the time when Tu Lan said
8 this, she meant whether it was Mike or other detectives. Here
9 Mike refers to the private detective, it doesn't really matter
10 to Mike or other detectives. That is my understanding.

11 Q I'm sorry, I couldn't hear that. Just the last -- could
12 you repeat that last sentence.

13 THE INTERPRETER: I can repeat the whole answer.

14 MR. LUSTBERG: Thank you.

15 A My understanding is this: When Tu Lan said this at the
16 time, whether it was Mike it would not matter, matter to the
17 private detective. So the Mike here refers to the private
18 detective, so it doesn't matter to Mike or other detectives,
19 it has nothing to do with them. That's my understanding of
20 this

21 Q I'm trying to understand. When Tu Lan says, Whomever
22 Mike is, was it your understanding, if you had an
23 understanding, that she was saying she didn't know who Mike
24 is?

25 A She knew who Mike was.

H. JIN - CROSS - MR. LUSTBERG

1 Q Okay. And when Johnny then says, If you have a talk
2 with -- in the next sentence. If you have a talk with Mike,
3 Mike Mike will think, Mike will, Mike Mike will then say that
4 it is you who told me to say so and so. I'm sorry that's
5 Johnny Zhu saying that. Did you have an understanding of what
6 Johnny Zhu was saying there?

7 MR. HEEREN: Objection, your Honor. Could we have a
8 brief sidebar?

9 THE COURT: Yes.

SIDEBAR CONFERENCE

1 (The following occurred at sidebar.)

2 MR. HEEREN: So, your Honor, my only concern is that
3 it's my recollection that Mr. Jin's testimony on direct was
4 that he didn't understand these messages because they were in
5 a different dialect. So I think asking him to review the
6 transcript at this point for this portion of the recording and
7 asking him to say what it meant, it's leading to some
8 speculation. I'm just concerned about it being confusing.

9 THE COURT: Well, I'm not sure which portions were
10 in dialect. Are you saying the entire conversation between
11 Tu Lan and Zhu was in dialect?

12 MR. HEEREN: No, the portions that are -- and it's
13 indicated in the interpreter's note --

14 THE COURT: Right, I remember.

15 MR. HEEREN: -- the portions that are underlined in
16 that transcript, and we pointed out on direct that, you know,
17 when we played it alongside it, he says that's Hubei dialect.

18 THE COURT: Let's go back for a minute. The first
19 part of the conversation that was asked about, was that
20 underlined or not?

21 MR. HEEREN: The part -- the first time I objected
22 it was. I think there was an earlier portion I didn't object
23 to that, that was in Mandarin.

24 THE COURT: Let me just say this. I think your
25 objection, though, I think reflects back in some way though to

SIDEBAR CONFERENCE

1 your admission of these as co-conspirator statements, and at
2 the time you made that comment on the record about the
3 underlined portion, I actually had a concern about whether you
4 could offer them as co-conspirator statements, if in fact your
5 argument is that he didn't understand what they were saying.
6 It's hard to argue that something is a co-conspirator
7 statement if the person who through whom they are being
8 offered doesn't actually understand them. It's almost like
9 not hearing them in some way.

10 But there was no objection at the time. And now I
11 guess the question becomes, can he comment. Because
12 normally -- and I think you obviously believe this because you
13 didn't object at first, normally I think it would be fair for
14 the defense to ask about what an alleged co-conspirator
15 believed other co-conspirators meant.

16 MR. HEEREN: Yes.

17 THE COURT: I think Mr. Lustberg, unfortunately,
18 you're a little stuck here because in fact you didn't object
19 before, which I thought it was interesting, but that's water
20 under bridge. Those statements have now come in as
21 co-conspirator statements, but the government I think
22 legitimately can say it's not proper to argue that he should
23 give some comment on it when actually he didn't understand it
24 at the time. You may want to ask him whether or not -- and
25 now I guess it's a question of playing the Chinese recording,

SIDEBAR CONFERENCE

1 whether he understood any of those or heard any of those
2 statements.

3 MR. LUSTBERG: Judge, the exact testimony that he
4 gave on direct examination was that he could understand
5 10 percent of this dialect. I think he's perfectly capable of
6 answering this question saying I didn't understand that, this
7 was a different dialect.

8 THE COURT: Well, let's do this instead. I think
9 you need to establish that he recalls hearing the statement
10 first at the time and then at least he could say, yes, I
11 recall them saying something to that effect, because it's
12 going to now be translated for him into Mandarin. He will at
13 least know what was said, at least the words that were said,
14 and then first you should say, do you recall that being said
15 and if he says no, I didn't, then you can't go any further
16 with asking him about what he thought it meant.

17 MR. LUSTBERG: Okay. The only additional question I
18 would ask, if he says he doesn't recall it is, I would say,
19 and the reason you didn't recall it was because it was in some
20 dialect you didn't understand --

21 THE COURT: Absolutely fine.

22 MR. LUSTBERG: -- or 10 percent of it.

23 THE COURT: Sorry, Georgette, that I spoke over the
24 lawyer.

25 MS. WONG: Your Honor, before we go back, I just

SIDEBAR CONFERENCE

1 wanted to note that Defendant Zheng had made a standing
2 objection for the admission of co-conspirator statements. I
3 just want to renew that standing objection for the record.

4 THE COURT: You can, but just for what it's worth,
5 it wasn't on this basis that some of it was in dialect. The
6 first issue that came up was when the government introduced
7 the exhibit and no one objected at that time or renewed the
8 objection. So just so it's clear, I dealt with it on paper
9 and I don't recall if you had a standing objection to
10 co-conspirator statements, because I thought the general
11 consensus was, yes, co-conspirator statements are admitted,
12 but the question became -- or admissible, rather, but the
13 question was going to be what the exact statements were that
14 were being offered and I had presumed that people would stand
15 up and object if, after hearing the actual statements or
16 seeing them, you now think they are not co-conspirator
17 statements.

18 So, again, when I heard the government qualify some
19 of what was introduced as co-conspirator statements, I was
20 surprised not to hear an objection, but it's not for me to
21 assume anything and there could be a strategic reason for not
22 objecting, I understand that. Especially because these are
23 conversations not with the defendant --

24 MR. LUSTBERG: Correct.

25 THE COURT: -- so...all I can say is your standing

SIDEBAR CONFERENCE

1 objection doesn't really go to this --

2 MS. WONG: No, your Honor.

3 THE COURT: -- and I don't recall actually even an
4 objection in the written submissions in the motions *in limine*,
5 but my memory on that may be wrong.

6 Because I recall only Mr. Lustberg filed anything at
7 all addressing co-conspirator statements.

8 MR. LUSTBERG: No, I didn't actually --

9 MS. WONG: Actually I filed, I filed it and I
10 requested a standing objection at our pretrial conference and
11 it will be something we'll be addressing later, I expect, but
12 I just wanted to renew it on the record, or later. It has
13 nothing to do with this particular issue about dialect.

14 THE COURT: For what it's worth and to make the
15 record clear, I don't view that, quote/unquote, standing
16 objection to apply specifically to these portions of the
17 conversation, because you didn't articulate that as a basis
18 and so I couldn't really address that then. I would say that
19 you had to renew that or particularize it if your issue or the
20 ground for it is that it was in a different dialect. I don't
21 recall that issue ever coming up before, so that's all I'm
22 saying.

23 I understand that you objected before we started the
24 trial, but I don't view that, quote/unquote, standing
25 objection as to apply to the particular basis here, which is

SIDEBAR CONFERENCE

1 that part of the conversation was in a different dialect that
2 he only understood 10 percent of. Okay. So for what it's
3 worth, I don't view that as having been preserved on this
4 issue.

5 MS. WONG: Your Honor, it's not for this specific
6 witness, it is something I believe we'll be addressing again
7 towards jury instructions.

8 THE COURT: Let me just make sure everyone
9 understands, you should object again if, when you hear the
10 actual statements when they are coming in, you believe that
11 somehow there's some other basis or additional basis for
12 objecting to them. But as a general matter, I found that
13 there was a conspiracy. Because you alleged a different
14 conspiracy and that, I now remember, was the basis of your
15 argument. That argument I rejected because I think the
16 government has put forth sufficient evidence of a broad
17 conspiracy involving different folks, but the hub being these
18 individuals or at least Tu Lan and Zhu, but if you have
19 another objection, such as one based on dialect or something
20 like that, you need to make it at the time.

21 MS. WONG: Understood, your Honor.

22 THE COURT: Okay, good. Thanks.

23 MR. HEEREN: Thank you, your Honor.

24 (End of sidebar conference.)

25 (Continued on the next page.)

H. JIN - CROSS - MR. LUSTBERG

1 CROSS-EXAMINATION (Continued)

2 BY MR. LUSTBERG:

3 Q I'll withdraw the question and rephrase.

4 So, Mr. Jin, I just read you a portion of the
5 transcript, and any first question is -- and I can do that
6 again, if you wish -- but my question is, the part that I read
7 to you, do you remember hearing that?

8 A Yes, I remember.

9 Q And so what did you understand Johnny Zhu to mean, since
10 you recall hearing it, when he said: If you have a talk with
11 Mike, Mike-Mike will think, Mike will, Mike-Mike will then say
12 that it is you who told me to say so and so.

13 What did you understand that to mean?

14 A I'm looking at the text right now, but I cannot
15 understand English. First of all, can I listen to what Johnny
16 actually said, that way I can answer more precisely.

17 MR. LUSTBERG: I would have to request the
18 government's assistance if they can play that exert, but I'm
19 happy to do that.

20 A Thank you.

21 MR. LUSTBERG: It's 7-0 -- let me make sure. Yes,
22 7:04 a.m.

23 THE COURTROOM DEPUTY: Thank you.

24 THE COURT: So, Ms. Chen, what's the audio that
25 you're going to play?

H. JIN - CROSS - MR. LUSTBERG

1 If you can isolate this portion of the conversation
2 in Chinese.

3 MS. CHEN: It think it's 7:04, Your Honor, beginning
4 at around one minute and 31 seconds. And we will end at two
5 minutes and five seconds.

6 THE COURT: All right, go ahead.

7 (Audio played; Audio stopped.)

8 A Thank you. I listened to that.

9 After I listened to the audio, I felt that when
10 Johnny Zhu mentioned Mike-Mike, it was because earlier Tu Lan
11 said no matter how Mike was like, it would be best for him to
12 fill the instruction and do so. So Johnny Zhu said maybe Mike
13 will not do it as instructed. That's my fault.

14 THE COURT: That's my fault?

15 THE INTERPRETER: That's my thought.

16 THE COURT: F-A-U-L-T.

17 MR. LUSTBERG: Thought.

18 THE COURT: Oh, thought, I'm sorry.

19 Q So your thought was, what you understood, was that there
20 was a concern that Mike would not do what -- he would not
21 follow that direction; is that correct?

22 A Yes.

23 Q Okay. And a little bit later, Tu Lan says this: He is
24 an American, I don't have any control.

25 Do you remember hearing Tu Lan say that?

H. JIN - CROSS - MR. LUSTBERG

1 A Yes.

2 Q And what did you understand Tu Lan to mean when she said
3 that?

4 A It would be the literal meaning, as in the private
5 detective is going arrive then, he could not be controlled or
6 he cannot be ordered.

7 Q Just one last thing about this meeting.

8 There's a time when Tu Lan tells Johnny Zhu that
9 Johnny Zhu should tell him, the private investigator, about
10 everything.

11 Do you recall that?

12 A I don't remember that.

13 Can you please put the English translate on the
14 screen so that I can look at it?

15 MR. LUSTBERG: Sure. Sure. So this is the same
16 exhibit, 704B, which is in evidence page 3.

17 If you can blow up that portion.

18 (Exhibit published.)

19 Q It says Tu: Tell him clearly. I mean, you need to tell
20 him clearly about everything.

21 Do you see that?

22 A Excuse me, maybe difference between the Chinese and
23 English regarding what she said. I need to see further up to
24 help me confirm what she was trying to express. Thank you.

25 Q Okay, so as you sit here right now, you don't recall that

H. JIN - CROSS - MR. LUSTBERG

1 statement?

2 A I remember she said that, however, I'm not sure whether
3 she said it in Mandarin or in the Hubei dialect, because the
4 audio was very long, I cannot remember exactly.

5 Q Well, let me just ask this question.

6 Do you know what Johnny Zhu said to the private
7 investigator?

8 A Sorry, I don't know.

9 Q Okay. Because you never spoke to Johnny Zhu about what
10 he said to the private investigator; is that correct?

11 A Yes, it was because when Johnny Zhu was talking to the
12 private investigator, at the time I was staying at another
13 table there was some distance, so I don't know what was
14 discussed.

15 Q And -- so let's actually go to that meeting.

16 When you're talking about sitting at a table that
17 was far away, that was at the Panera Bread in Paramus, New
18 Jersey, correct?

19 A Yes, it was at a Panera Bread, and it was in New Jersey,
20 but I'm not sure of the location, which town.

21 Q Okay. At the Panera Bread, you didn't speak to the
22 private investigator there; did you?

23 A Yes.

24 Q You did not?

25 A I did not have any conversation with the private

H. JIN - CROSS - MR. LUSTBERG

1 detective.

2 Q Okay. That Panera Bread, it was a public restaurant,
3 right?

4 A Yes.

5 Q And there were a number of people there, right?

6 A Yes.

7 Q It was actually around lunchtime, so there were a lot of
8 people getting food to eat for lunch, right?

9 A Yes.

10 Q And you testified yesterday that -- about the videos that
11 you saw from the Panera Bread.

12 You remember you testified about videos that were
13 taken at the Panera Bread?

14 A Panera Bread, yes, I remember.

15 Q And you testified that those were, your words, were
16 normal videos.

17 Do you remember saying that?

18 A Yes, I remember.

19 Q And what you meant is that they are the kinds of videos
20 that are taken at businesses like the Panera Bread, right?

21 A Yes.

22 Q You weren't surprised that the Panera Bread -- that there
23 were videos from the Panera Bread; were you?

24 A I'm not.

25 Q And the -- other than the one minute or so when Johnny

H. JIN - CROSS - MR. LUSTBERG

1 Zhu went outside to meet the private investigator, the entire
2 time they were there in that public place; is that right?

3 A Yes.

4 Q Any way, you sat off to the side from them; is that
5 right?

6 THE INTERPRETER: Can I have the question again?

7 MR. LUSTBERG: Yes, I'm sorry.

8 Q Mr. Jin, you sat at some distance from Johnny Zhu and the
9 private investigator, correct?

10 A Yes.

11 Q So you couldn't hear any of their conversation; am I
12 right?

13 A Yes.

14 Q Okay. And after -- withdrawn.

15 I think you testified yesterday that after Johnny
16 Zhu spoke to the private detective, that he did not tell you
17 what they had discussed; is that correct?

18 A Yes.

19 Q Okay. Now, you understood that the private detective was
20 going to do surveillance; am I correct about that?

21 A Yes.

22 Q And did you know what else he was doing? For example,
23 did you know that he was also gathering records about the
24 assets of the people that were being surveilled?

25 A Sorry, I don't know about that.

H. JIN - CROSS - MR. LUSTBERG

1 Q Okay. But you were doing surveillance, too, at the same
2 time as the private detective; is that correct?

3 A Yes.

4 Q And he was not supposed to know that you were doing
5 surveillance at the same time; was he?

6 A That should not be the case. I feel that based on the
7 audio recording recorded at the hotel in the previous day, I
8 reminded Johnny Zhu to tell the private detective that I was
9 on another group that was performing a surveillance, and
10 Johnny Zhu at the time promised me to do so. So I feel that
11 the private detective should not know.

12 Q So let me ask you this. You testified yesterday that
13 there came a time during your surveillance when you got bored
14 and you drove around, right?

15 A Yes.

16 Q And during that time you passed by the private detective
17 who was doing surveillance, too, correct?

18 A Yes.

19 Q And do you remember testifying yesterday that Johnny Zhu
20 then yelled at you? That was your words. Because the private
21 detective had seen you doing the surveillance?

22 A Yes.

23 Q Okay. By the way, you testified that you -- some of the
24 surveillance that you did, you did with those nighttime vision
25 binoculars; is that correct?

H. JIN - CROSS - MR. LUSTBERG

1 A Yes.

2 Q You have no idea whether the private detective had any
3 such night vision binoculars; do you?

4 A I don't know.

5 Q Just a couple other questions.

6 You testified yesterday about assisting Johnny Zhu
7 and Tu Lan to rent a car.

8 Do you remember that?

9 A Yes.

10 Q And that was one of the things you did to assist -- in
11 working for the Chinese government, correct?

12 A Yes.

13 Q The car that was rented, was that car used in
14 surveillance, in the surveillance of the residence?

15 A I'm not sure whether Johnny Zhu did surveillance at the
16 residence or not, it was because when I did mine own
17 surveillance I was in my own car. I'm not sure at that time
18 whether Johnny Zhu was looking at it at the same time.

19 Q Right. And your car, what is the color of your car?

20 A Black.

21 Q Just one last question.

22 Do you know what town the residence was in that you
23 were surveilling?

24 A Right now I can only remember it's in New Jersey. I
25 don't remember which town it was.

JIN - CROSS - MR. TUNG

1 Q Okay. So you don't know whether it was in Short Hills or
2 Warren?

3 A I don't know right now, but at that time I remembered.

4 MR. LUSTBERG: Good. Thank you.

5 No further questions, Your Honor. Thank you.

6 THE COURT: Thank you, Mr. Lustberg.

7 Ms. Wong?

8 MS. WONG: No questions for this witness. Thank
9 you.

10 THE COURT: All right, Mr. Tung?

11 MR. TUNG: Thank you.

12 CROSS-EXAMINATION

13 BY MR. TUNG:

14 Q Sir, could you take a look at the person, I'm asking him
15 to stand up.

16 Did you ever meet this person in your lifetime?

17 A Maybe I did, but I don't remember I seen him.

18 Q Did you talk to him before?

19 A Based on my recollection.

20 THE COURT: Mr. Tu, you can sit down.

21 MR. TUNG: Thank you. One other question.

22 Can we show the witness with Government Exhibit 807F
23 and page 4, please.

24 THE COURT: I'm going to ask for the government's
25 assistance again. Thank you.

JIN - CROSS - MR. TUNG

1 (Exhibit published.)

2 Q Sir, before you -- sorry, withdrawn.

3 Sir, can you -- we are looking at the same exhibit,
4 right? You found that page, right?

5 MR. HEEREN: Your Honor, just for the sake of the
6 record, I do want to note I believe the witness has a Chinese
7 language version.

8 THE COURT: So is the witness looking at a Chinese
9 language version of these English translations?

10 THE WITNESS: Yes, I'm looking at the Chinese
11 version.

12 THE COURT: And that is 807?

13 MR. HEEREN: A.

14 Q And according to the date stamp of the communications
15 between you and Johnny Zhu, that's April 1st, 2017, correct?

16 A Yes.

17 Q And to your memory, you started to pick up Tu Lan and Zhu
18 Feng, which is Johnny Zhu, from Newark Airport, April 3rd,
19 2017, correct?

20 A Yes.

21 Q So that's fair to say that April 3rd, 2017, that is your
22 first day you started to work for the Chinese government,
23 correct?

24 A According to you're saying, it could be this way.

25 Q So that's fair to say before you started to work for the

JIN - REDIRECT - MR. HEEREN

1 Chinese government, you were told by the person who associated
2 with at the time Chinese government that you will be working
3 for the Chinese government, correct, according to the
4 conversation that's displayed on the screen?

5 A Yes.

6 MR. TUNG: Thank you very much.

7 THE COURT: Thank you, Mr. Tung.

8 Any redirect?

9 MR. HEEREN: Yes, Your Honor, very briefly.

10 REDIRECT EXAMINATION

11 MR. HEEREN: Ms. McMahon, could you please bring up
12 Government Exhibit 704A, at page 3, which has been admitted
13 into evidence.

14 And can you zoom in on the bottom of the page: Do
15 you understand what I'm say? Thank you. Just that one.
16 Okay.

17 (Exhibit published.)

18 BY MR. HEEREN:

19 Q Mr. Jin, do you recall that defense counsel asked you
20 about Tu Lan saying I don't have any control over the private
21 investigator?

22 A I remember.

23 Q And looking at the translation it reads: I don't have
24 much control, right?

25 A Yes.

JIN - REDIRECT - MR. HEEREN

1 MR. HEEREN: And then if we could close that part
2 out. Thank you. And scroll down. If you can just blow up:
3 Tell him clearly, please.

4 Q And a bit earlier Tu Lan says: Tell him clearly, I mean,
5 you need to tell him clearly about everything.

6 Did I read that right?

7 A Yes.

8 Q All right. You can take that exhibit down.

9 Do you recall one of defense counsel asking you
10 about the -- when Zhu Feng yelled at you for being seen by the
11 private investigator?

12 A I remember.

13 Q And was the issue that during your surveillance that
14 another person doing surveillance saw you?

15 A Yes.

16 Q Was the issue also that another person -- well, was there
17 anyone else that they didn't want you to be seen by?

18 A Yes.

19 Q Who else did they not want you to be seen by?

20 A It should be the private detective.

21 Q Okay. Was there a concern that the victims would see you
22 also because you were driving around?

23 A Yes.

24 Q And you were supposed to be following them to find
25 another location, right?

JIN - REDIRECT - MR. HEEREN

1 A Yes.

2 Q And would it have been harder that night to have done so
3 if the victims saw you driving around?

4 A Yes.

5 Q Now do you recall you were also asked about how Zhu Feng
6 told that you the Chinese government was in charge of this
7 operation?

8 A Yes.

9 Q But you also knew what was -- well, and you were also
10 told what the plan was for the former official, right?

11 A Yes.

12 Q What did you understand was -- did they want to do with
13 the Chinese official, former Chinese official?

14 A They wanted to bring back the former Chinese official
15 back to China.

16 Q What was going to happen -- what did you understand they
17 wanted to bring him back to China for?

18 A To bring him back to China so that he will plead guilty.

19 They also wanted him to bring back the corrupted
20 asset back to China together.

21 MR. HEEREN: One second, Your Honor.

22 THE COURT: All right.

23 (Pause in the proceedings.)

24 MR. HEEREN: No further questions, Your Honor.

25 THE COURT: Thank you, Mr. Heeren.

JIN - REDIRECT - MR. HEEREN

1 Any recross?

2 MR. HEEREN: No recross, Your Honor.

3 THE COURT: Mr. Tung?

4 MR. TUNG: No.

5 THE COURT: All right, thank you very much.

6 You may step down. You are excused.

7 (The witness was excused.)

8 THE COURT: Government, call your next witness.

9 MS. CHEN: The government calls Kevin Hecht.

10 THE COURT: Mr. Hecht, let's have you approach the
11 witness stand and remain standing one moment so we can swear
12 you in.

13 (Witness takes the witness stand.)

14 **KEVIN HECHT**, called as a witness, having been first duly
15 sworn/affirmed, was examined and testified as follows:

16 THE COURTROOM DEPUTY: Thank you. Have a seat.

17 Please state and spell your name for the record.

18 THE WITNESS: Kevin A. Hecht. K-E-V-I-N. A.
19 H-E-C-H-T.

20 THE COURT: Mr. Hecht, I'm going to have you pull
21 the microphone closer to you, and speak directly into it,
22 slowly and clearly.

23 All right you may inquire, Ms. Chen.

24 MS. CHEN: Thank you, Your Honor.

25 DIRECT EXAMINATION

HECHT - DIRECT - MS. CHEN

1 BY MS. CHEN:

2 Q Do you currently work?

3 A I do not.

4 Q Are you retired?

5 A Yes.

6 Q And when did you retire?

7 A I retired in December of 2021.

8 Q And prior to your retirement, where did you work?

9 A I was a special agent for the Federal Bureau of
10 Investigation.

11 Q Is the Federal Bureau of Investigation also known as the
12 FBI?

13 A Yes.

14 Q Okay. When did you start working with the FBI?

15 A I started in September of 1998.

16 Q And just briefly, beginning in September 1998, can you
17 walk the jury through your different assignments at the FBI?

18 A Yes.

19 For approximately 16 weeks, all -- back then, all
20 the special agents attended the FBI academy in Quantico,
21 Virginia for training.

22 At the end of that assignment, you are given your
23 office of employment. I was sent to the New York office,
24 where I remained my whole career.

25 The first year in New York, generally you get your

HECHT - DIRECT - MS. CHEN

1 feet wet by doing things such as background investigations of
2 federal employees, surveillance, and working in the operations
3 center fielding phone calls and tips from the public.

4 After that first year, you're assigned to your
5 permanent squad, I'll call it, the team. And my first squad I
6 was assigned to in August of 1999 was a squad that dealt with
7 Chinese foreign counterintelligence, and I worked in that same
8 field my entire career, except for a two-year stint where I
9 was associate division counsel in the FBI, so general counsel
10 office.

11 Q And regarding that two-year stint, were you acting as an
12 attorney in that position?

13 A Yes.

14 Q Do you have a law degree?

15 A I do.

16 Q When did you get that law degree?

17 A I got that in August of 1997.

18 Q And just very briefly, can you talk a little bit about
19 the training you received in connection with your role at the
20 FBI?

21 A Sure.

22 We receive continual training in firearms. Arrest
23 techniques. Legal training. Training in how to perform
24 counterintelligence investigations.

25 I also received extensive training in Mandarin

HECHT - DIRECT - MS. CHEN

1 language. And I participated in some training in order to
2 teach other special agents in investigative techniques, et
3 cetera.

4 Q In connection with your role as a FBI special agent, did
5 you ever receive any certifications?

6 A I did. I was certified as a counterintelligence agent.

7 Q And what about with respect to any language
8 certifications?

9 A I was certified as a one plus Mandarin speaker.

10 The FBI rated you based on your proficiency from
11 zero to five. Five being native speaker.

12 Q In your role as a special agent, have you ever been
13 involved in interviews of targets or subjects of an
14 investigation?

15 A Yes.

16 Q I want to direct your attention now to April 12th of
17 2017, okay?

18 A Okay.

19 Q Were you working that day?

20 A I was.

21 Q Can you remind the jury what your assignment was back in
22 April 2017?

23 A I was working China foreign counterintelligence
24 investigations.

25 Q Where were you that day April 12th?

HECHT - DIRECT - MS. CHEN

1 A On that day, I was working at Liberty International
2 Airport in Newark, New Jersey.

3 Q And why were you there?

4 A There was a subject we were interested in speaking to who
5 was going to be departing a flight from Liberty International
6 Airport.

7 Q And what was the name of that subject?

8 A That subject's name was Zhu Feng.

9 Q That spelled Z-H-U, F-E-N-G?

10 A Yes.

11 Q Did that individual about go by any other name that
12 you're aware of?

13 A I believe he also went by the name of Johnny Zhu.

14 Q What was the purpose of being there that day in Newark?

15 A The investigation focused on potential subjects of
16 interest that Mr. Zhu may have been able to provide
17 information on.

18 Q Did you, in fact, speak with Mr. Zhu that day?

19 A I did.

20 Q When you spoke with Mr. Zhu, who else was there?

21 A Special Agent Chris Bruno, and I believe there were two
22 FBI language translators present in case we needed their
23 services.

24 Q Okay. And where was that interview conducted?

25 A The Customs and Border Protection has a number of

HECHT - DIRECT - MS. CHEN

1 interview rooms at international airports they use to speak
2 with subjects they may be interested in talking to privately,
3 so we used a room provided by Customs and Border Protection.

4 Q Okay.

5 MS. CHEN: May I publish, just to the witness and
6 counsel, using the ELMO, what has been premarked for
7 identification as Government Exhibit 708.

8 (Exhibit published to the witness.)

9 THE COURT: Yes.

10 And just to give the jury an idea, we're going to
11 take a break in just a couple of minutes, about 11:30 .

12 Go ahead.

13 Q Special Agent Hecht, do you recognize what you're seeing
14 in front of you?

15 A Yes. This is, I believe, a hard drive containing a video
16 recording that I reviewed on May 18th, 2023.

17 Q And how can you tell that?

18 A I initialed it on the label affixed to the drive.

19 Q And does this drive contain a true and accurate copy of
20 the video recording of your April 12th, 2017 interview with
21 Zhu Feng?

22 A Yes, it does.

23 MS. CHEN: Your Honor, the government offers into
24 evidence Exhibit 708.

25 MR. LUSTBERG: Your Honor, can we have a sidebar?

PROCEEDINGS

1 THE COURT: Let's do this then, let's take our
2 morning break, and we'll have this discussion off the record.

3 So, ladies and gentlemen, remember do not talk about
4 the case. Don't do any research. Keep an open mind.

5 We'll start again at quarter of noon.

6 THE COURTROOM DEPUTY: All rise.

7 (Jury exits the courtroom.)

8 THE COURT: Agent, I ask you to step down, and I'm
9 going to ask you to leave the courtroom.

10 Have a seat, everyone. Hold on one second. Wait
11 until the witness is gone.

12 MR. LUSTBERG: Your Honor, on further -- actually, I
13 don't have an objection. I thought -- something was in my
14 head, but I will -- and I apologize, and I'm sorry we made us
15 take the break a few minutes earlier.

16 THE COURT: Oh, my gosh, can't get that minute back.
17 No, that's totally fine.

18 MR. LUSTBERG: I'm sorry about that.

19 THE COURT: Is there any objection from Ms. Wong?

20 MS. WONG: No, Your Honor.

21 MR. TUNG: No objection.

22 THE COURT: Okay. So when we go back on the record,
23 I'll admit the exhibit, and then I presume you're going to
24 played the audio. It's in English with the translator, right?

25 MS. CHEN: It's in English.

PROCEEDINGS

1 THE COURT: Okay, terrific.
2 So you folks have 15 minutes.
3 Thanks, everybody.
4 (A recess was taken at 11:31 a.m.)
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PROCEEDINGS

1 (Continuing.)

2 (Judge PAMELA K. CHEN enters the courtroom.)

3 MS. CHEN: Your Honor, should I get witness?

4 THE COURT: Yes, please do.

5 (The witness resumes the stand.)

6 THE COURT: Welcome back, Agent Hecht. We're just
7 going to get the jury. You can have a seat until then. They
8 should be here any minute.

9 THE COURTROOM DEPUTY: All rise.

10 (Jury enters the courtroom.)

11 THE COURT: Please be seated, everyone.

12 Welcome back, ladies and gentlemen.

13 Government Exhibit 708 is admitted.

14 (Government Exhibit 708, was received in evidence.)

15 THE COURT: Did you want to publish it?

16 MS. CHEN: No, Your Honor. May we publish
17 Government Exhibit 708B, which, again, is 708 with the
18 transcript added as subtitles for assistance for the jury.

19 THE COURT: Okay. So ladies and gentlemen, as I
20 reminded you with respect to an earlier videotape, the
21 subtitles are merely offered as an aid to your listening to
22 the videotape. But obviously, your hearing governs.

23 All right. Go ahead.

24 MS. CHEN: And if we could go to minute -- one
25 minute and eight seconds in. Actually, sorry. A little bit

HECHT - DIRECT - MS. CHEN

1 back. One minute five seconds in.

2 DIRECT EXAMINATION (Continued)

3 BY MS. CHEN:

4 Q Special Agent Hecht, have you reviewed this video before?

5 A I have.

6 Q And have you confirmed that prior to one minute and five
7 seconds, no individuals appear in the video and no audio is on
8 the video?

9 A That's correct.

10 Q Okay.

11 MS. CHEN: If we could play it now.

12 (Video recording played.) (Video recording stopped.)

13 THE COURT: Maybe just a little less loud, because
14 it's distorted. A little softer.

15 MR. HEEREN: We're going to back it up a little bit.

16 THE COURT: You can start from the beginning, just
17 maybe lower the volume a tad.

18 (Video recording played.)

19 MS. CHEN: We could stop there.

20 (Video recording stopped.)

21 Q And Special Agent Hecht, have you reviewed the remainder
22 of this video?

23 A I have.

24 Q And have you confirmed there is no additional individuals
25 appearing or any audio on the rest of this video?

HECHT - DIRECT - MS. CHEN

1 A There's none.

2 Q On April 12, 2017, did you -- did the FBI take into its
3 possession, night vision goggles from Zhu Feng?

4 A Yes. After receiving consent, the FBI did take
5 possession of those goggles.

6 MS. CHEN: And may we publish what is in evidence
7 already as Government Exhibit 501A.

8 (Exhibit published.)

9 Q Do you recognize this, Special Agent Hecht?

10 A I do.

11 Q What is this?

12 A These are the night vision goggles that the FBI took
13 possession of on April 12th, 2017, and various accessories
14 that came with the goggles.

15 MS. CHEN: Can we go to Page 4 of this exhibit.

16 Q And what is this, Special Agent Hecht?

17 A This is -- well, this is the actual goggles, opened, with
18 the batteries showing in the goggles.

19 MS. CHEN: And can we zoom in on the batteries in
20 this photo.

21 Q Do you recognize any language on that -- on those
22 batteries?

23 A Yes. The language on the batteries is Chinese
24 characters.

25 Q Special Agent Hecht, are you familiar with the use of

HECHT - DIRECT - MS. CHEN

1 night vision goggles?

2 A I am.

3 Q Has the FBI ever used night vision goggles in connection
4 with surveillance?

5 A Yes.

6 Q Are you aware of different types of night vision goggles?

7 A I'm aware of two types. One uses -- it magnifying
8 ambient light that's already present in the environment so you
9 can see better, and there's also goggles that use infrared
10 technology that will track heat signatures of objects,
11 warmblooded animals, people will show up as a brighter
12 orange-red color in the infrared spectrum.

13 MS. CHEN: May I publish on the ELMO, actually, and
14 show what is in evidence as Government Exhibit 501.

15 (Exhibit published.)

16 Q Special Agent, do you see where my pen is pointing to in
17 IR?

18 A Yes.

19 Q What, if anything, does that mean to you?

20 A To me it means that once that button is depressed, the
21 goggles will use infrared technology to view subjects.

22 Q Other than April 12th, 2017, have you seen Zhu Feng
23 again?

24 A No.

25 Q And other than that interview of Zhu Feng, were you

HECHT - CROSS - MS. WONG

1 involved in this investigation at all?

2 A I was not.

3 MS. CHEN: Okay. May I have one second, Your Honor?

4 Q Just to confirm, Special Agent Hecht, what I've just
5 shown you here, Exhibit 501, that is, in fact, the night
6 vision goggles you seized on April 12, 2017?

7 A Yes.

8 MS. CHEN: No further questions, Your Honor.

9 THE COURT: Thank you, Ms. Chen.

10 Cross-examination?

11 MR. LUSTERBERG: No questions, Your Honor.

12 THE COURT: Ms. Wong?

13 MS. WONG: Yes.

14 CROSS-EXAMINATION

15 BY MS. WONG:

16 Q Special Agent Hecht, I heard during the video that you
17 were going to be very cognizant of the timing of Zhu Feng's
18 flight.

19 Is that correct?

20 MS. CHEN: Objection.

21 Beyond the scope.

22 MR. GOLDBERGER: That's what was said.

23 THE COURT: Overruled.

24 A Yes.

25 Q To the best of your knowledge, did Mr. Johnny Zhu make

HECHT - CROSS - MS. WONG

1 his flight?

2 A Yes, he did.

3 MS. WONG: No further questions.

4 THE COURT: Thank you.

5 Mr. Tung?

6 MR. TUNG: No questions.

7 THE COURT: Thank you. Any redirect?

8 MS. CHEN: No, Your Honor.

9 THE COURT: All right. Thank you very much. You
10 may step down.

11 (The witness was excused.)

12 THE COURT: Government, call your next witness.

13 MR. HEEREN: Your Honor, the Government calls Jeff
14 Tarkin to the stand, T-A-R-K-I-N.

15 THE COURT: Mr. Tarkin, if you'll come up here and
16 approach the witness stand and remain standing for one moment
17 so we can swear you in.

18 (The witness enters the stand.)

19 THE COURTROOM DEPUTY: Please raise your right hand.

20 (The witness was sworn and/or affirmed in by the
21 courtroom deputy.)

22 THE WITNESS: I do.

23 THE COURTROOM DEPUTY: Have a seat.

24 The microphone moves, okay. Speak directly into the
25 microphone.

TARKIN - DIRECT - MR. HEEREN

1 Please state and spell your name, for the record.

2 THE WITNESS: Jeffrey Tarkin, J-E-F-F-R-E-Y,
3 T-A-R-K-I-N.

4 MR. HEEREN: May I inquire, Your Honor?

5 THE COURT: You may.

6 **JEFFREY TARKIN**, called as a witness called by the Government,
7 having been first duly sworn/affirmed, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HEEREN:

11 Q Good afternoon, Mr. Tarkin.

12 A Good afternoon.

13 Q Where do you work?

14 A I work at the U.S. Attorney's Office.

15 Q And what is your role or title?

16 A I'm a contract investigator.

17 Q Okay. And what does that mean?

18 A I work for a private company that has a contract with the
19 U.S. Attorney's Office, and I'm a civilian investigator in the
20 National Security and Cyber Crimes Section.

21 Q How long have you been with the U.S. Attorney's Office?

22 A Just over three years.

23 Q Before that, what did you do?

24 A I was a special agent with the Federal Bureau of
25 Investigation.

TARKIN - DIRECT - MR. HEEREN

1 Q For how long?

2 A Just over 20 years.

3 Q Have you reviewed documents related to your expected
4 testimony today?

5 A I have.

6 Q Have you had any -- apart from that, have you had any
7 other involvement in the investigation or prosecution of this
8 matter?

9 A No.

10 MR. HEEREN: I want to first read into the record,
11 what's been admitted as Government's Exhibit 202 at paragraph
12 four, please.

13 And it reads: Government Exhibit 405 is a true and
14 accurate copy of records obtained from Hilton Hotels and
15 Resorts, and pursuant to that stipulation, the Government
16 moves to admit Government Exhibit 405.

17 THE COURT: Any objection?

18 MR. LUSTERBERG: I'm sorry, Your Honor. No
19 objection.

20 MS. WONG: No objection.

21 MR. TUNG: No objection.

22 THE COURT: Okay. 405 is admitted. You may
23 publish.

24 (Government Exhibit 405, was received in evidence.)

25 MR. HEEREN: Can we please publish Government

TARKIN - DIRECT - MR. HEEREN

1 Exhibit 405, Ms. McMahon.

2 (Exhibit published.)

3 Q And Mr. Tarkin, directing your attention to the top
4 portion of the page -- which I'm going to ask Ms. McMahon to
5 blow up. That's perfect.

6 Do you see a name and address in the left-hand side
7 of this document?

8 A Yes.

9 Q And does this document appear to be a folio or receipt
10 from Embassy Suites by Hilton?

11 A Appears to be.

12 Q So directing your attention to the name and address,
13 could you please read into the record the name.

14 A It's Ji Hu.

15 Q And how is that spelled?

16 A J-I, and H-U.

17 Q And is the address 95 International Boulevard?

18 A Yes.

19 Q Okay. And just looking now at -- do you see the arrival
20 date?

21 A I do.

22 Q What is the arrival date that's listed here?

23 A October 30, 2016, 12:00 o'clock p.m.

24 Q And what was the departure date?

25 A November 5, 2016, at 6:47 a.m.

TARKIN - DIRECT - MR. HEEREN

1 MR. HEEREN: I'd like to now turn to what's been
2 previously admitted as Government's Exhibit 3068.

3 Okay. Ms. McMahon, if we could just please show the
4 top. Yup.

5 Q Mr. Tarkin, what's the e-mail address this reflects
6 is -- withdrawn.

7 What e-mail address is listed in the "from" field?

8 A EricYan75@YAHOO.COM.

9 Q And who is the e-mail to, according to the document, what
10 e-mail address?

11 A Mike@McMahonInvestigativeGroup.com.

12 Q Going forward, if I refer to the e-mail address
13 EricYan75@YAHOO.COM as the Eric Yan e-mail address, will you
14 understand what I'm talking about?

15 A Yes.

16 Q And if I refer to the Mike@McMahonInvestigativeGroup.com
17 e-mail as the McMahon e-mail address, will you understand what
18 I'm talking about?

19 A Yes.

20 Q Okay. So I want to direct your attention to the
21 bottom-most e-mail on this e-mail thread.

22 MR. LUSTERBERG: And Ms. McMahon, if you can close
23 the call out and show us the bottom-most e-mail.

24 Q Could you please read -- who is that e-mail from?

25 A EricYan75@YAHOO.COM.

TARKIN - DIRECT - MR. HEEREN

1 Q Could you just please read that e-mail into the record.

2 A Mike, Xu Jin's father will visit him from China this
3 Saturday. We just want to recommend you trace him to find
4 Xu Jin's address. I will live at Liu Yan's house, 335 Long
5 Hill Drive, Short Hills, New Jersey, 07078. My friend in New
6 York will meet you to give the money in cash and tell you the
7 time Xu's father arrive at the house.

8 Do you agree to accept this job or not. Waiting for
9 your reply. Eric.

10 Q Can we just scroll up to the next e-mail.

11 And is this a response from the McMahon e-mail
12 account?

13 A Yes.

14 Q What's the response?

15 A Yes. I will accept this job. Thanks. Mike.

16 MR. HEEREN: And then just one more e-mail, the next
17 one up, please.

18 Q And is this an e-mail back from the Eric Yan e-mail
19 account?

20 A Yes.

21 Q Ask what's the response?

22 A Okay. When we get the details, I will send you a mobile
23 message.

24 Q Okay. Directing your attention to what's been previously
25 admitted as Government's Exhibit 4019B, starting at Page 194.

TARKIN - DIRECT - MR. HEEREN

1 MR. HEEREN: And Ms. McMahon, if you could please
2 blow up, first, when you get to it, the participants. Okay.

3 Q Who are the participants reflected in Government's
4 Exhibit 419B?

5 A Mike McMahon and Eric Gallowitz.

6 Q And do you see a phone number above Mike McMahon and an
7 e-mail address before Eric Gallowitz?

8 A Yes.

9 Q And I want direct your attention just before that --
10 excuse me, I want to direct your attention now to the
11 conversation blow it, in green.

12 Does this appear to be a chat message between those
13 two participants?

14 A Yes.

15 Q Okay. And does this appear to be a message from the
16 individual listed as the owner, Eric Gallowitz?

17 A Yes.

18 Q Could you please read -- I want to read through these,
19 from 194 through 199. If you could please read the green
20 chats, and I'll read the blue ones.

21 Can you do that for me?

22 A Yes.

23 Q And actually before we do that, if we look down at the
24 bottom right corner, it's a bit hard to see, but do you see a
25 date and time of this communication?

TARKIN - DIRECT - MR. HEEREN

1 A Yes.

2 Q And what is the date and time?

3 A March 30, 2017. It has 9:16:19 a.m. in UTC Time.

4 Q Mr. Tarkin, could you please read that chat into the
5 record, and I'll read the blue, and we'll go back and forth.

6 A Any confirmation and/or details on Saturday.

7 Q Now, to Page 95, please.

8 Again, at March 30th, 2017, 9:17 a.m.

9 No, not yet. Waiting to hear back. I sent him an
10 e-mail yesterday.

11 And then the next message, please.

12 A Okay. Please let me know as soon as possible. Did he
13 give you a retainer?

14 Q Okay. Next message, please.

15 Meeting his friend by the subject's home the day of.

16 Next message please.

17 A Okay. Let me know.

18 Q And then last message is the next one, please.

19 This message is on a new day, March 31st at
20 11:52a.m.

21 Never heard back from Asian. I guess we're off for
22 now unless he contacts me later.

23 MR. HEEREN: Okay. Turning back to Government
24 Exhibit 3068 which has previously been admitted. And if you
25 could blow up the top two e-mails, please.

TARKIN - DIRECT - MR. HEEREN

1 Q And Mr. Tarkin, do you see the e-mail in this thread that
2 begins March 30th, 2017?

3 A Yes.

4 Q Does that appear to be from the McMahon e-mail account?

5 A Yes.

6 Q Could you please read that into the record.

7 A Let me know if we working Saturday. I need to plan for
8 this. Mike.

9 Q And then what is the response to that e-mail?

10 A Not Saturday. My friend will call from Monday to
11 Tuesday.

12 Q And what date was that last e-mail sent?

13 A March 31, 2017.

14 Q Okay.

15 MR. HEEREN: I want to turn know to what's been
16 admitted as Government Exhibit 405.

17 I'm turning to Page 12 of the exhibit, please. If
18 you could please blow up the first -- the header area. Thank
19 you. Okay.

20 Q Do you see what appears to be a series of dates on the
21 right-hand side of this exhibit?

22 A Yes. There are two dates.

23 Q And when we looked 405 earlier, do you recall that those
24 dates for the other part of the exhibit reflected the check-in
25 and checkout dates?

TARKIN - DIRECT - MR. HEEREN

1 A Yes.

2 Q Okay. What is the top date of the two?

3 A April 3rd, 2017, 7:49 p.m.

4 Q Okay. And what was the checkout date?

5 A April 6, 2017. At 8:22 a.m.

6 Q Okay. And do you see what appears to be on the left
7 hand, a name?

8 A I do.

9 Q And can you please read the name into the record or spell
10 it if you aren't able to read it?

11 A Lan, L-A-N, Tuo, T-U-O.

12 Q And just directing your attention back to the first page
13 of Government's Exhibit 405.

14 MR. HEEREN: And if we could just blow up the top
15 third of the page -- the whole top third, actually.

16 That's good.

17 Q I had you previously read the address of the individual
18 on the left earlier, right?

19 A Correct.

20 Q And then could you please read the address listed here on
21 the right, top right-hand side associated with Embassy Suites?

22 A 95 Glimcher Realty Way, Elizabeth, New Jersey.

23 Q Okay.

24 MR. HEEREN: Turning back to Page 14 of Government
25 Exhibit 405. Same exhibit, please.

TARKIN - DIRECT - MR. HEEREN

1 And if you could just blow up the top portion again,
2 please, Ms. McMahon. Thank you.

3 Q Do you again see what appears to be a check-in and
4 checkout date on the right side?

5 A Yes.

6 Q Could you please read those dates and times into the
7 record.

8 A April 5, 2017, at 8:47 p.m. and April 6, 2017, at
9 9:17 a.m.

10 Q And could you please read the name associated with this
11 record on the left-hand side.

12 A It's L-I and then M-I-N-J-U-N.

13 MR. HEEREN: And then turning one page further. And
14 if you just blow up the top portion including the table.

15 Q Does this appear to be a record associated with the same
16 person whose name you just spelled into the record Minjun Li?

17 A Yes.

18 Q And do you see where it says last hotel on the right-hand
19 side of the page under, other information?

20 A Yes.

21 Q Could you just read that into the record, please.

22 A Embassy Suites by Hilton Elizabeth Newark Airport.

23 MR. HEEREN: Okay. You can close that up,
24 Ms. McMahon.

25 Turning to Government's Exhibit -- excuse me. I

TARKIN - DIRECT - MR. HEEREN

1 don't believe we've admitted it yet, so I'm going to offer to
2 admit Government's Exhibit 410, pursuant to an existing
3 stipulation. That has been admitted.

4 MR. LUSTERBERG: No objection.

5 MS. WONG: No objection.

6 MR. TUNG: No objection.

7 THE COURT: All right. You may -- that's admitted.
8 You may publish.

9 MR. HEEREN: Sorry, I meant 4010. So 4-0-1-0. So I
10 think we should ask again. That's a different exhibit.

11 MR. LUSTERBERG: Are we seeing it?

12 MR. HEEREN: Sorry. That was the wrong exhibit. So
13 let's first show 4010.

14 THE COURT: Okay. Just to the witness right now and
15 the parties.

16 Do you want to ask him any questions about it?

17 MR. HEEREN: No, Your Honor. I just want to move to
18 admit it pursuant to stipulation.

19 THE COURT: Oh, all right. Any objection?

20 MR. LUSTERBERG: No objection.

21 MS. WONG: No objection.

22 MR. TUNG: No objection.

23 THE COURT: 4010 is admitted. You may publish.

24 MR. HEEREN: Thank you, Your Honor.

25 (Government Exhibit 4010, was received in evidence.)

TARKIN - DIRECT - MR. HEEREN

1 (Exhibit published.)

2 Q First, looking at the first page of this exhibit,
3 Mr. Tarkin, what does this appear to be to you?

4 A A text messaging.

5 Q Say it again?

6 A Text messaging.

7 Q And do you see what appears to be a name associated with
8 this text message at the top?

9 A Yes.

10 Q What is the name at the top?

11 A Eric's friend from China.

12 Q Okay. And what is the date of the first text message in
13 this chain that was sent?

14 A April 4, 2017, 8:47 a.m.

15 Q Okay. And could you please read into the record, the
16 chats on the right-hand side until, "okay," and I'll read the
17 chats on the left-hand side.

18 A Yes. Panera Bread 770 Route 17 Paramus, New Jersey
19 07652.

20 Q Got it. Thanks -- or THX. 2:00 p.m. See you when I see
21 you, my friend.

22 A Okay.

23 Q Mike, I'm already -- I'm here already. Just want to let
24 you know. Take your -- UR -- time, please -- P-L-Z. No rush.
25 Call me when you get here please -- P-L-Z.

TARKIN - DIRECT - MR. HEEREN

1 A Okay. Here. Parking.

2 Q All right. I want to direct your attention now to what's
3 been admitted as Government's Exhibit 4019B at Page 208.

4 (Exhibit published.)

5 MR. HEEREN: And if we could just blow up the
6 participants in the text message.

7 Q Is this, again -- are the participants, again, Mike
8 McMahon and Eric Gallowitz, according to the documents?

9 A Yes.

10 Q Okay.

11 MR. HEEREN: Can we just show the text message,
12 please.

13 Q And what's the date associated with this text message?

14 A April 4, 2017.

15 Q And again, the message in green appears to be from the
16 owner, Eric Gallowitz?

17 A Yes.

18 Q Can you read the green messages, and I'll read the blue
19 ones, going from Page 208 to 29. And Mr. Tarkin, if you
20 notice that the date changes, can you please say so when
21 you're reading it.

22 A Okay.

23 Q Please go ahead and start.

24 A Don't forget to send me details for tomorrow.

25 Q Yes.

TARKIN - DIRECT - MR. HEEREN

1 MR. HEEREN: And then an attachment is sent. If we
2 could please go to the next page. And if you could please --
3 if it's possible to turn that image.

4 Thank you. And the image reflects, 335 Long Hill
5 Drive, Short Hills, New Jersey, 07078, with a blue circle
6 around it.

7 Okay. To the next message, please.

8 A 10-4.

9 Q Okay.

10 MR. HEEREN: Next message, please.

11 Next message appears to be an attachment. If you
12 could turn that. Yeah. And the next page appears to be a
13 larger version of that same image that was sent.

14 Okay. And the next page.

15 A Yes.

16 Q Okay.

17 MR. HEEREN: Next page, please.

18 A Call local PD. Let them know we are out there.

19 Q Okay.

20 MR. HEEREN: Keep going, please, to 219.

21 Q Yes. For sure. Plate number and your vehicle type.

22 A EPD5239 Ford Silver.

23 Q Okay.

24 MR. HEEREN: Now, if I could please -- I now move to
25 admit -- well, now marked for identification and showed to the

TARKIN - DIRECT - MR. HEEREN

1 witness and defense counsel only, Government's Exhibit 4011.

2 THE COURT: Any objection to the admission of 4011?

3 MR. LUSTERBERG: No, Your Honor.

4 MS. WONG: No, Your Honor.

5 THE COURT: Admitted. You may publish.

6 (Government Exhibit 4011, was received in evidence.)

7 (Exhibit published.)

8 Q Okay. Just -- and does this -- I want to scroll through
9 the first two pages. Okay. Going back.

10 Does this appear to be a series of chat messages?

11 A Yes.

12 Q Who is -- who are the chat messages to, according to
13 Exhibit 4011?

14 A Mike Kelly.

15 Q Okay. So going back to the first page.

16 What date is this message sent?

17 A April 4, 2017.

18 Q And what time?

19 A 4:34 p.m.

20 Q Do the two images you see here, do they appear to be the
21 same images we just saw sent in the prior text messages?

22 A Yes.

23 Q Okay. Now, turning to the next page.

24 And can you just read the right-hand side underneath
25 the image and I'll read the left-hand side of this page.

TARKIN - DIRECT - MR. HEEREN

1 A 8:00 a.m. start.

2 Q Got it.

3 A What's your plate number and vehicle type and color? I
4 need to call local PD.

5 Q 2016 black jeep Cherokee. Will get you plate later.

6 MR. HEEREN: Now, can we please go to what was
7 previously admitted as Government's Exhibit 3069.

8 Can we please blow up -- thank you.

9 Q Who is this message from and sent to, Mr. Tarkin?

10 A The EricYan75@YAHOO.COM, to
11 Mike@McMahonInvestigativeGroup.com.

12 Q And what date and time was this sent?

13 A April 4, 2017, 11:19:22 p.m.

14 Q What's the subject?

15 A Photo.

16 Q Okay. And do there appear to be two attachments to this
17 e-mail?

18 A Yes.

19 Q Okay.

20 MR. HEEREN: And just turning to what's been
21 previously admitted as Government's Exhibit 370. And then
22 371.

23 Q Are those the attachments to that e-mail?

24 THE COURTROOM DEPUTY: I'm sorry, that's 3070 and
25 3701 --

TARKIN - DIRECT - MR. HEEREN

1 MR. HEEREN: All right. My apologies. 3070 and
2 3071, both of which have previously been admitted.

3 Q Mr. Tarkin, are those the attachments to the e-mail we
4 just looked at?

5 A They appear to be.

6 MR. LUSTERBERG: I want to turn to Government's
7 Exhibit -- what's been previously admitted as Government's
8 Exhibit 3072.

9 And just looking at the header part first, please.

10 Q Does this appear to be an e-mail that was sent the next
11 day on April 5th, 2017?

12 A Yes.

13 Q Okay. And who is this e-mail from?

14 A MikeMcMahonInvestigativeGroup.com.

15 Q And that's Mike@McMahonInvestigativeGroup.com?

16 A Yes.

17 Q Okay. And who is this e-mail sent to?

18 A EricYan75@YAHOO.COM. Fancysaga@YAHOO.COM.

19 Q So that's two different e-mail addresses?

20 A Correct.

21 Q When was this sent -- I'm sorry, I think I asked you that
22 already. Withdrawn.

23 What's the subject?

24 A Invoice from McMahon Investigative Group.

25 Q Okay.

TARKIN - DIRECT - MR. HEEREN

1 MR. HEEREN: And Ms. McMahon, if you could just open
2 up the subject of the e-mail or the body of the e-mail.

3 Q Can you just read the contents of the e-mail.

4 A Your invoice is attached and includes payment-due
5 information. Please let us know if you have any questions.
6 Thank you for your business. Sincerely Michael McMahon.
7 McMahon Investigative Group. McMahon Investigative Group
8 again and the address.

9 MR. HEEREN: Can we please turn to what's been
10 admitted as Government's Exhibit 3073.

11 Q Does this appear to be the attachment to that e-mail that
12 you just looked at?

13 A Yes, it appears to be.

14 MR. HEEREN: Can you please zoom in on the "bill to"
15 box.

16 Q Can you just read what it says in the "bill to" box.

17 A Eric Yan and J. Zhu, Z-H-U.

18 Q Thank you.

19 MR. HEEREN: And can you blow up the date of the
20 invoice and the item description section.

21 Q Can you please tell us what the date of the invoice is?

22 A April 4, 2017.

23 Q And what is the -- what is listed under, "item"?

24 A Investigative work.

25 Q And what's the description, if any, listed?

TARKIN - DIRECT - MR. HEEREN

1 A Met with Mr. Zhu, Z-H-U, in Paramus, New Jersey, and
2 received a retainer fee of 5,000 cash. Case of Jin Xu, J-I-N,
3 X-U.

4 Q Okay.

5 MR. HEEREN: I'm going to turn to now to what's been
6 previously admitted as Government's Exhibit 4010, 4-0-1-0 at
7 Page 846. Sorry, 847.

8 THE COURT: It's in evidence?

9 MR. HEEREN: Thank you. Yes.

10 And can we show 4010 side by side with 3072.

11 Can we please blow up the header of 3072. And the
12 chat where it says, in 4010, My e-mail is.

13 Q Mr. Tarkin, is the e-mail address -- one of the e-mail
14 addresses in 3072 that was sent that e-mail, is that the same
15 e-mail address as listed in Government's Exhibit 4010?

16 A Yes.

17 Q Okay. And that's fancysaga@YAHOO.COM?

18 A Yes.

19 Q Okay.

20 MR. HEEREN: Thank you. You can close those up.

21 (Continued on the following page.)
22
23
24
25

TARKIN - DIRECT - MR. HEEREN

1 DIRECT EXAMINATION (Continued)

2 BY MR. HEEREN:

3 Q And then showing you Government's Exhibit, what's been
4 previously admitted as Government's Exhibit 814.

5 If you can blow up row one, Ms. McMahon.

6 Do you see in the second row, second column where it
7 says username?

8 A Yes.

9 Q What is the username?

10 A Fancysaga@yahoo.com.

11 Q Do you see the notes section there is a value after
12 source file?

13 A Yes.

14 Q Can you just read the first two words before the slash
15 after source file?

16 A Johnny's iPhone.

17 Q Thank you.

18 Turning to Government's Exhibit 317, 317 which has
19 been previously admitted.

20 If we could please blow up the section around
21 8:53 a.m. and keep going down until around 11:25. That's fine
22 too, right there.

23 Mr. Tarkin, do you see this chart?

24 A Yes.

25 Q What do you understand, generally, this chart to be?

TARKIN - DIRECT - MR. HEEREN

1 A These are call records pertaining to a phone belonging to
2 Zhu Z-H-U, Feng F-E-N-G with a phone number (917)348-5950.

3 Q For the sake of clarity, did you have any involvement in
4 preparing this chart?

5 A No.

6 Q So is your knowledge limited to what you're reviewing
7 here?

8 A Yes.

9 Q What is the date reflected for all of these phone calls?

10 A April 5, 2017.

11 Q Do you see the first two rows reflects two outgoing phone
12 calls from the Zhu Feng phone?

13 A Yes.

14 Q What times were those made?

15 A The first one is at 8:53:27 a.m. and the second one was
16 9 o'clock 30 a.m.

17 Q Who are those calls sent -- made to, according to the
18 chart?

19 A They were both outgoing calls to Tu Lan, T-U L-A-N.

20 Q Then the next entry, what time is the next entry, the
21 third one down?

22 A 10:21:22 a.m.

23 Q So that's approximately an hour and 20 minutes after the
24 preceding phone call on the chart?

25 A Yes.

TARKIN - DIRECT - MR. HEEREN

1 Q Who is that phone call from and to?

2 A It's also from Zhu Feng, Z-H-U F-E-N-G to McMahon.
3 (914) 450-9169.

4 Q And then are there series of additional calls
5 approximately -- well, excuse me, is there a call five minutes
6 after the call to McMahon?

7 A Yes.

8 Q Who is that call to?

9 A Tu Lan. (917) 348-9230.

10 MR. HEEREN: I now want to show the witness and
11 defense counsel only what's been marked for identification as
12 Government's Exhibit 401. If you can scroll to the next page
13 please.

14 The government would move to admit Exhibit 401
15 pursuant to stipulation.

16 MR. LUSTBERG: No objection.

17 MS. WONG: No objection.

18 MR. TUNG: No objection.

19 THE COURT: Admitted. You may publish.

20 (Government Exhibit 401, was received in evidence.)

21 (Exhibit published.)

22 MR. HEEREN: If we can stay on this page please,
23 Ms. McMahon, as we publish. Before we blow up it.

24 Q Mr. Tarkin, does this appear to be an Alamo car receipt?

25 A Yes.

TARKIN - DIRECT - MR. HEEREN

1 Q Directing your attention to the top left corner do you
2 see what appears to be a person's name directly under the box
3 labeled R-A?

4 A Yes.

5 Q Could you please read the name into the record or spell
6 it?

7 A F-E-N-G, Z-H-U.

8 Q What's the address associated with it?

9 A College Point, New York 11356.

10 Q And what's the rental location, according to the record?

11 A Newark International Airport.

12 Q What date was this car rented?

13 A April 5, 2017.

14 Q And approximately what time?

15 A 12:21 p.m.

16 MR. HEEREN: Can you pull out a little bit or close
17 the call out. Could you blow up the return date please and
18 return location.

19 Q According to this record, when was this car returned?

20 A Returned on April 12, 2017. At 12:30 p.m.

21 Q All right. Turning to what has been previously
22 admitted -- turning back to what has been previously admitted
23 as Government's Exhibit 317, please. I want to direct your
24 attention to the rows beginning at 139 and ending with six --
25 ending to the bottom of the page. Thank you.

TARKIN - DIRECT - MR. HEEREN

1 Are these all calls made on April 5th, 2017?

2 A Yes.

3 Q And do these calls begin at 1:39 p.m.?

4 A Yes.

5 Q And that's -- I can show it to you if I need to refresh
6 your recollection, but is that approximately an hour after the
7 car rental records you just looked at?

8 A Yes.

9 Q And who is the first call -- well, looking at the first
10 six calls on the chart, who are those calls between according
11 to the chart?

12 A Z-H-U F-E-N-G and Tu Lan. T-U-L-A-N.

13 Q Does that appear to be, again, according to the chart,
14 two different numbers associated with Zhu Feng which you
15 spelled Z-H-U F-E-N-G?

16 A Yes.

17 Q You see one is in purple and one is in yellow?

18 A Yes.

19 Q After those series of calls -- well, when do those series
20 of calls end in the chart?

21 A At 4:33 p.m.

22 Q And then what's the next call in the entry log at
23 4:33:30 p.m. between?

24 A It's between McMahon (914) 450-9169 and Kelly at
25 (516) 666-0445.

TARKIN - DIRECT - MR. HEEREN

1 Q And now the next set of phone calls begins at what time?

2 A 4:36 p.m.

3 Q And then looking towards the very end, what time do these
4 series of calls end on this page?

5 A 6:20 p.m.

6 Q And can you indicate the first three, who are those calls
7 between?

8 A It is Zhu Feng and Tu Lan.

9 Q Then the next two are between who?

10 A Tu Lan and Hongru Jin, H-O-N-G-R-U J-I-N.

11 Q Then what's the next call between?

12 A Zhu Feng and Hongru Jin.

13 Q And the last three calls, who are those between?

14 A Zhu Feng and Tu Lan.

15 Q Can we go to the next page, please. You can actually
16 close it up for now.

17 I want to direct your attention now to what was
18 previously admitted as Government's Exhibit 4010 at pages 848
19 to 849. Can we just blow up the first message on the page
20 after. Okay, thanks.

21 What time was this message sent?

22 A 6:58 p.m.

23 Q And is that approximately 30 to 40 minutes after the last
24 of those series of phone calls that you just read into the
25 record?

TARKIN - DIRECT - MR. HEEREN

1 A Yes.

2 Q Can you just read what the message says.

3 A I just got the package ETA 7:40 p.m.

4 Q Now I'd -- you can close the call out, please.

5 I'd like to read the remainder of these chats from
6 this page and the next page. Beginning with "okay" and can
7 you read the green side and I'll read the gray chats.

8 A Okay, question mark.

9 Q Before I read the next chart, when was that question mark
10 text sent?

11 A April 5, 2017 at 8:43 p.m.

12 Q So about an hour and 43 minutes later in the evening?

13 A Yes.

14 Q How is going?

15 A Quiet so far. Did you drive by us.

16 Q No, I didn't. I'm not there at all after I drop Xu.

17 I got a guy driving Toyota Sienna, that's my guy.
18 He's watching for me. If that's him ignore it.

19 A Okay. I saw him drive past me.

20 Q You can stop there.

21 I want to direct your attention now to Government's
22 Exhibit 405. If we can go to page -- go to about page 16, two
23 back please. If you can please blow up the top part. Thank
24 you.

25 Direct your attention to Government's Exhibit 405,

TARKIN - DIRECT - MR. HEEREN

1 who is this record associated with again? Looking at the top
2 left corner.

3 A Li Minjun, M-I-N-J-U-N.

4 Q What was the time of check-in, according to this record,
5 date and time according to this record?

6 A April 5, 2017 at 8:47 p.m.

7 MR. HEEREN: Now turning back to Government's
8 Exhibit 317, which has been previously admitted, and direct
9 your attention to page 2, at row -- the row for 8:49 and
10 8:53 p.m. About right here.

11 Can you actually expand it to the message just above
12 it too. Sorry. Perfect, thank you. Little bit further down,
13 please?

14 THE COURT: This is going to be the last question
15 before our lunch break.

16 MR. HEEREN: Yes, your Honor.

17 Q Great. Do you see a phone call at April 5th, 2017 at
18 8:49 p.m.?

19 A Yes.

20 Q And who is that message from and to?

21 A This is from -- excuse me. This is from McMahon
22 (914)450-9169 to Zhu Feng (917)348-5950.

23 MR. HEEREN: Just going side by side -- this will be
24 the very last question, I'll be done, your Honor, right before
25 break.

TARKIN - DIRECT - MR. HEEREN

1 THE COURT: All right.

2 MR. HEEREN: Side by side with Government's
3 Exhibit 4010 at page 848.

4 Q Do you see the time that those chat messages start on the
5 second half of the page?

6 A 8:43 p.m.

7 Q So was that phone call shortly after the time that those
8 text messages started?

9 A Yes.

10 THE COURT: All right. Thank you very much,
11 Mr. Heeren.

12 Ladies and gentlemen, it's about 1 o'clock, we'll
13 take our lunch break now until 2 p.m.

14 Please don't talk about the case, don't do any
15 research, keep an open mind, and have a wonderful lunch.

16 THE COURTROOM DEPUTY: All rise.

17 (Jury exits courtroom.)

18 THE COURT: Mr. Tarkin, you can step down.

19 (The witness stepped down.)

20 THE COURT: Everyone else, you're free to go until
21 2 p.m. I do have a couple of criminal matters, just short
22 status during the lunch break.

23 (Luncheon recess.)
24
25

PROCEEDINGS

A F T E R N O O N S E S S I O N

(2:10 p.m.)

THE COURTROOM DEPUTY: All rise.

(Jury enters courtroom.)

THE COURT: Please be seated everyone.

Welcome back, ladies and gentlemen, I hope you had a good lunch.

Now we all have observed the haze has gotten worse since we've been in Court. We have these HEPA filters, two of them, that have been turned on in the courtroom. I realize there is a smell certainly from the haze and Ms. Gonzalez is obviously handing out face masks. If, at any point, anyone feels some kind of adverse affect just raise your hand, for example, dizzy or anything else, just let us know.

We're going to resume the examination of the witness by the government.

Mr. Heeren, go ahead.

MR. HEEREN: Thank you, your Honor.

DIRECT EXAMINATION(Continued)

BY MR. HEEREN:

Q Good afternoon, Mr. Tarkin.

A Good afternoon.

MR. HEEREN: Good afternoon, ladies and gentlemen. If I could please publish what's been previously admitted as Government's Exhibit 4010, 4-0-1-0, and going to page 849.

TARKIN - DIRECT - MR. HEEREN

1 Q Mr. Tarkin, is this chat messages with Eric's friend from
2 China?

3 A Yes.

4 Q Could you please read -- excuse me, do you see the date
5 about halfway down the page, the date and time?

6 A Yes, April 5th, 2017, 10:35 p.m.

7 Q Could you please read the chats with me that follow that
8 date and time until we get to the end of page 851 and if you
9 could please read the green chats and I'll read the white
10 chats.

11 A Lights are almost out.

12 Q Dismiss if light goes off.

13 A Okay.

14 Q Is there any clue?

15 A No clue. I can see in the kitchen, I saw two women
16 walking around.

17 Q Do you see the old man?

18 A Yes. He was sitting at the kitchen table.

19 Q Would you be able to shoot a picture on the old guy?
20 Eric wants it.

21 A Too dark.

22 MR. HEEREN: I'm sorry, can you please go back,
23 Ms. McMahon, just blow up the image for one second, the two
24 images that straddle across the two pages. Thank you.

25 Q Does that appear to depict an image that was sent in the

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1 chat message Mr. Tarkin?

2 A Yes.

3 Q You can close that up.

4 Could you please start again at, too dark?

5 A Too dark.

6 Q Got it thanks, or THX.

7 A Lights are all off now. I don't think the subject will
8 show up tonight.

9 Q K. Dismiss. We do TMR.

10 A Okay. I'll be here at 8 a.m. Bad weather a lot of rain.

11 Q Sorry, SRY, Mike, I was driving. I have discuss with
12 Eric, you start monitor at 9 a.m. TMR.

13 MR. HEEREN: We can stop there.

14 Can we please turn to -- can we publish what's been
15 previously admitted as Government's Exhibit 4019B starting at
16 page 229.

17 And could you show the participants please.

18 Q Are the participants in 4019 Mike McMahon and Eric
19 Gallowitz, according to the exhibit?

20 A Yes.

21 MR. HEEREN: Could you please blow up that first
22 chat. I'd like to show this side by side with Government's
23 Exhibit 4010, and if you can go to page 849 of 4010. Could
24 you blow up the time and date. Thank you.

25 Q So do these messages on the left in Government's

TARKIN - DIRECT - MR. HEEREN

1 Exhibit 4019B appear to have taken place a few minutes after
2 the chat messages you just read in --

3 A Yes.

4 Q -- Government's Exhibit --

5 A Sorry.

6 Q -- in Government's Exhibit 4010?

7 A Yes.

8 MR. HEEREN: Let's go to 4019B. You can close out
9 the side by side.

10 If you could please just blow up the chat itself.

11 Q Mr. Tarkin, we're going to read from page 229, or the
12 chats beginning on page 229 to page 241. I will read the blue
13 chats, if you can read the green chats.

14 Is that okay?

15 A Yes.

16 Q All right. April 5th, 2017 at 10:43 p.m. I hang back a
17 bit.

18 Okay. Have a safe trip.

19 A You are staying?

20 Q Yes, light just came on.

21 And before we close that just to orient people
22 again, who does the exhibit depict this message is from?

23 A Mike McMahon.

24 Q Now we can go to the next message.

25 Upstairs.

TARKIN - DIRECT - MR. HEEREN

1 A Okay, I will standby.

2 Q That car his friend is driving keeps driving by.

3 A Dump.

4 Q Ass.

5 A Dumb.

6 You trust them?

7 Q Sorry, I didn't hear that. Can you say that again?

8 THE COURT: You trust them.

9 MR. HEEREN: Thank you, your Honor.

10 Q No.

11 MR. HEEREN: We can stop there.

12 I'd like to now publish for the jury, Government's
13 Exhibit 406 -- I'm sorry, before we do that. I'd like to show
14 to the witness and defense counsel Government's Exhibit 406.

15 And the government would move to admit Government's
16 Exhibit 406 pursuant to stipulation.

17 MR. LUSTBERG: No objection.

18 MS. WONG: No objection.

19 MR. TUNG: No objection.

20 THE COURT: Admitted. You may publish.

21 (Government Exhibit 406, was received in evidence.)

22 THE COURT: Isn't that the one you want?

23 MR. HEEREN: Yes, your Honor.

24 THE COURT: Go ahead.

25 MR. HEEREN: If you could please blow up the top

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1 third of the page.

2 (Exhibit published.)

3 Q Does this appear to be a hotel receipt, Mr. Tarkin?

4 A Yes.

5 Q Direct your attention to the address information in the
6 top left corner, do you see address information there?

7 A Yes, it's the ESA Elizabeth Newark Airport.

8 Q What's the street that that's on?

9 A It's on 45 Glimcher Realty Way.

10 Q Do you see the information below that relating to that
11 appears to associate a person to this receipt?

12 A Yes.

13 Q Could you just read that information into the record.

14 A It's receipt number 188324. The name is Z-H-U S-E-N-G.
15 5854 229th Street, Oakland Gardens, New York 11364.

16 MR. HEEREN: If we could just show this side by side
17 with what's been previously admitted as Government's
18 Exhibit 815. If we can blow up the fourth row. Thank you.

19 Q Can you see that there's an address associated with
20 Government's Exhibit 815 in the fourth column?

21 A Yes.

22 Q Does that appear to be substantially the same address --
23 well, does that appear to be the same city and state?

24 A Yes.

25 Q Does it appear to be the same street?

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1 A Yes.

2 Q And is there any differences in the house or residence
3 number?

4 A No.

5 Q Is one 5854 and one 5844?

6 A Yes.

7 Q Is the name -- do you see a name on the bottom one for
8 815?

9 A Feng Zhu, F-E-N-G Z-H-U.

10 MR. HEEREN: You can close the two up and go back to
11 Government's Exhibit 406.

12 Q What was the arrival and departure date of the person,
13 according to this record?

14 A April 5, 2017, departure April 6, 2017.

15 Q I want to direct your attention now to Government's
16 Exhibit 4010 at pages 852. Are these text messages in 4010
17 associated with Eric's friend in China?

18 A Yes.

19 Q What time is the time listed just above where it says,
20 Morning, Mike?

21 A April 6, 2017, 9:04 a.m.

22 Q I'd like you to read this with me until we get to
23 page 856. I'll read the left-hand side, if you can read the
24 right-hand side.

25 Good morning, Mike. PLZ let me know any status if

TARKIN - DIRECT - MR. HEEREN

1 possible today.

2 A Okay.

3 Q Then does there appear to be a picture sent?

4 A Yes.

5 MR. HEEREN: Could you please blow that up,
6 Ms. McMahon, just that first picture please.

7 (Exhibit published.)

8 MR. HEEREN: You can close that out.

9 Q Based on the fact that it's on the right-hand side, does
10 that appear to be message sent from the user on the right-hand
11 side?

12 A Yes.

13 Q Scrolling down. Is that a second image that was sent
14 from the user -- from one of the chat participants?

15 A Yes.

16 Q What does that appear to depict?

17 A A New Jersey license plate P73-DNG.

18 Q Continuing to read.

19 Thanks. What's the car model?

20 A Women driving a MEBE picked her up.

21 Q A women pick a women?

22 A Yes.

23 Q Then going on to the next page.

24 Okay. Pay attention on the old guy and hit the
25 jackpot from him.

TARKIN - DIRECT - MR. HEEREN

1 A Yes.

2 Q Thanks, MC GJ.

3 The two women left?

4 A Okay, she's back. She just got dropped off.

5 Q Okay. Please run the plate info, if possible.

6 A Yes, can't run it until I get home.

7 Q If we can go to the next page. Does that appear to be
8 the same message at the top of this next page as well?

9 A Yes.

10 Q Continuing after that, all right, thanks. Eric suggest
11 she might be Xu's wife. That's what he says from pic.

12 A Yes, she is, I remember her.

13 Q Keep an eye on her. She might leave with the old guy.
14 Because that's her husband father.

15 A Yes.

16 Q This might be the best chance to track where they live.
17 Thanks, again.

18 Continuing to the next page.

19 A She just left alone driving her Mercedes-Benz SUV.

20 Q Track her. Are you following her?

21 A Yes.

22 Q We need every information from her. Where she stop and
23 who she meets. THX, GJ.

24 A Yes. She's at fitness center.

25 Q Okay. Keep an eye on her. We believe she will lead us

TARKIN - DIRECT - MR. HEEREN

1 to her residence. Take a pic for every spot she stop if
2 possible.

3 A Of course.

4 Q THX.

5 A She's back home.

6 Q To where, 335 Short Hills Drive?

7 A Yes.

8 Q Did you see her sister who is the owner of the house?

9 A No. She was by herself.

10 Q Strange. Where the car park at. BTW, did you put GPS on
11 her car?

12 A No, did not use GPS.

13 Q Okay. We might confused of who she is. Cuz her sister
14 lives here. Let's keep watching. Thanks. MC.

15 A Okay.

16 Q We just had meeting. We are not sure who is the lady.
17 Either Liu Fang or her sister Liu Yan. But if it is Liu Yan,
18 her activity is normal because she live here and she is a
19 housewife.

20 Then just --

21 A Okay.

22 MR. HEEREN: We can stop there.

23 I'd like to briefly direct your attention back to
24 the image on page 852. Can we place this side by side with
25 what has previously been admitted as Government's

TARKIN - DIRECT - MR. HEEREN

1 Exhibit 811C, and can you go down another page to page 4
2 please. One more page, please. Thank you. Could you please
3 blow up the chat and the picture, please -- actually before
4 you do that.

5 Q Mr. Tarkin, can you please read to us the names of the
6 users depicted, according to Exhibit 811C?

7 A Tu Tu, T-U T-U and Endlessjohnny.

8 Q Thank you. Which of these users does this message appear
9 to be coming from?

10 A Endlessjohnny.

11 Q Could you please blow up -- excuse me, before you blow up
12 the message, do you see the two pictures?

13 A Yes.

14 Q What do you notice about the picture in Government's
15 Exhibit 811C and Government's Exhibit 4010?

16 A They're the same.

17 MR. HEEREN: Would you please blow up the chat
18 message please, Ms. McMahon.

19 Q Could you just read that into the record Mr. Tarkin?

20 A Okay, Mike has some leads. I am having a three-way call
21 with them. I will look it up for you later.

22 MR. HEEREN: You can close these both up.

23 I want to direct your attention now to what's been
24 previously admitted as Government's Exhibit 4011, 4-0-1-1, at
25 page 913. Scrolling down to the bottom of that first page

TARKIN - DIRECT - MR. HEEREN

1 or -- actually, Ms. McMahon, if you could call out the bottom
2 of the page including the date. If you can make it a little
3 bit lower, I'm going to ask a question about under the whole
4 chat. Make the call out a little bit lower please. Thank
5 you.

6 Q Who does this chat message appear to be with, according
7 to Government's Exhibit 4011?

8 A Mike Kelly.

9 Q And does this appear to show an image that was sent
10 during this chat message?

11 A Yes, it does.

12 Q Approximately what time and date was this image sent?

13 A April 6th, 2017 at 9:36 a.m.

14 Q Does that appear to be the same picture that we saw in
15 the two prior exhibits?

16 A Yes, it does.

17 Q Scrolling down to the next page. Does this also appear
18 to be the same two images that we saw in Government's
19 Exhibit 4010?

20 A Yes.

21 Q Scrolling down further. What time-- keep going to
22 page 959. Thank you. What date and time do these next series
23 of messages appear to have been sent?

24 A April 6th, 2017, 1:06 p.m.

25 Q What is depicted in the image that appears to have been

TARKIN - DIRECT - MR. HEEREN

1 sent immediately below, immediately below that date?

2 A A New Jersey license plate YNB-58G.

3 Q I'd like you to read the next chat, please.

4 A He's being very cautious. He parked a few houses away
5 and waited for the garage door to open.

6 Q Going to the next page, please. What appears to be
7 depicted on this page?

8 A Two pictures. One of a Mercedes-Benz with New Jersey
9 license plate YNB-58G, and the second picture is two SUVs, one
10 a dark gray and the other one a lighter gray or silver.

11 Q Can we scroll down to the next page, please. So looking
12 at the first image, what was depicted here?

13 A It's the same two SUVs, one darker gray and one a
14 lighter, light gray.

15 Q This was sent from one user to another --

16 A Yes.

17 Q -- in this chat according to the exhibit?

18 A Yes.

19 MR. HEEREN: Next image, please. Could you please
20 call out the bottom.

21 Q Do you see a person depicted in the middle here with
22 the -- well, withdrawn. Do you see the name Xu Jin in the
23 image that was sent?

24 A Yes.

25 Q Am I placing a line by that name and a photograph

TARKIN - DIRECT - MR. HEEREN

1 associated with this name and some other information

2 associated with that name?

3 A Yes.

4 Q And without stating the information, what types of
5 information -- actually withdrawn. Moving on to the next
6 page, and does that appear to be the same image again?

7 A Yes.

8 Q What's the text message after that?

9 A Which one?

10 Q When is the next set of text messages sent, according to
11 the exhibit?

12 A April 6th, 2017 at 3:44 p.m.

13 MR. HEEREN: Can you please scroll down,
14 Ms. McMahon. Could you please blow up the first picture.

15 Q Does this appear to be a photo that was sent from one
16 user to the other?

17 A Yes.

18 Q What appears to be depicted in this photo?

19 A Appears to be a male driving the vehicle.

20 Q Turning to the next picture. Is this another photograph
21 that was sent from one user to the next?

22 A Yes.

23 Q What appears to be depicted in this photo?

24 A Appears to be a male with a hat and glasses driving a
25 dark colored SUV.

TARKIN - DIRECT - MR. HEEREN

1 Q And if you look at the picture, does this appear to be a
2 picture taken from inside of one vehicle?

3 A Yes.

4 Q You can see the door lock on the middle right-hand side
5 of the picture?

6 A Yes.

7 Q Okay.

8 MR. HEEREN: Can we just scroll through the next
9 several pictures, Ms. McMahon. If you just blow up this next
10 picture please.

11 Q Just to save time, does this also appear to depict a
12 picture of that same man only closer up?

13 A Yes.

14 Q Okay. And do the next two also appear to depict that
15 same man in a further closeup?

16 A Yes.

17 Q Scrolling down to the next page. Does that final picture
18 that we see here appear to, again, be the same man?

19 A Yes.

20 MR. HEEREN: You can close that call out,
21 Ms. McMahon.

22 Q What time do the next two -- what time did the first of
23 the next two chat messages -- withdrawn. What date and time
24 do you see above the next two chat messages?

25 A April 6th, 2017, 9:37 p.m.

TARKIN - DIRECT - MR. HEEREN

1 Q Could you read the one on the right, I'll read the one on
2 the left?

3 A Good job today, Mike.

4 Q Worked out well. Thanks.

5 I'd like to show what's been marked for
6 identification as Government's Exhibit 805A for the witness
7 and counsel only. If we can just scroll down from the top of
8 the page to the bottom of the page. And Mr. Tarkin, I'm happy
9 to show you any other pages. Can you tell us, have you had an
10 opportunity to previously review Government's Exhibit 805A?

11 A Yes.

12 Q Generally speaking, what is Government's Exhibit 805A?

13 A It's a Cellebrite extraction of text messages.

14 Q If you can just blow up the participants, please. What
15 are the names of the participants reflected in the report?

16 A Michael McMahon and Johnny Zhu, Z-H-U.

17 Q Now I'd like to show you Government's Exhibit 805B for
18 identification only. Again, have you had an opportunity to
19 previously review Government's Exhibit 805B?

20 A Yes.

21 Q Is Government's Exhibit 805B a reformatted version of
22 Government's Exhibit 805A?

23 A Yes.

24 Q Have you reviewed the content of 805B?

25 A Yes.

TARKIN - DIRECT - MR. HEEREN

1 Q Is the content of the exhibit, Exhibit 805B, the same as
2 the content of Government's Exhibit 805A?

3 A Yes.

4 Q Is there any changes in terms of formatting with regard
5 to the date or time?

6 A The time has been changed from UTC to Eastern Standard
7 Time.

8 MR. HEEREN: Your Honor, the government moves to
9 admit Government's Exhibit 805B into evidence.

10 MR. LUSTBERG: No objection.

11 MS. WONG: No objection.

12 MR. TUNG: No objection.

13 THE COURT: Admitted. You may publish.

14 (Government Exhibit 805B, was received in evidence.)

15 (Exhibit published.)

16 Q Now that the jury can see it, can you please tell us who
17 are the two participants reflected in Government's
18 Exhibit 805B and starting with the participant on the
19 left-hand side?

20 A Michael McMahon and Johnny Zhu.

21 Q Sorry, just to be clear, Mr. Tarkin, does it read
22 McMahon, Michael?

23 A It does.

24 Q What's the phone number associated with that name?

25 A (914) 450-9169.

Tarkin - Direct - Heeren

1 (Continuing.)

2 BY MR. HEEREN:

3 Q And what's the email address associated with Johnny Zhu?

4 A Endlessjohnny@gmail.com.

5 Q Sir, I'd like to read these chats beginning on this
6 page and --

7 MR. HEEREN: One second, Your Honor.

8 Q -- ending on page 3.

9 Could you please read the text messages from Johnny
10 Zhu, and I will read the text messages from McMahon Michael.

11 A Are you following her?

12 Q Yes.

13 A We need every information from her, where she stop and
14 who she meets. Thanks GJ.

15 Q Before we continue on, I forgot to ask you:

16 What was the date and time of the first of these
17 text messages that you read?

18 A April 6, 2017, 10:26 a.m.

19 Q Thank you.

20 So now beginning again with McMahon Michael at
21 April 6, 2017, 10:28 a.m.:

22 Yes. She's at fitness center.

23 A Okay. Keep an eye on her. We believe she will lead us
24 to her residence. Take a pic for every spot she stop if
25 possible.

Tarkin - Direct - Heeren

1 Q Of course.

2 A Thanks; THX.

3 Q Now, I'm not going to read this next part in, but now
4 that we've been oriented, do these appear to be some of the
5 same messages you just read a minute or two ago?

6 A Yes.

7 Q Okay. So now scrolling further ahead, we're going to
8 start where it reads, the date reads April 6, 2017, at
9 12:57 p.m. And I'll again read McMahon Michael if you read
10 Johnny Zhu. And do you see where I'm starting, where it says,
11 I'm assuming?

12 A Yes.

13 Q And then we'll read to the end of the page.

14 I'm assuming you would like to continue surveillance
15 on Friday, as well. And Saturday?

16 A Yes, Friday is a must. IDK about Saturday, but I will
17 speak with Eric and make decision because we have intel told
18 us Zhu is coming to pick up his father TNT, TMR.

19 MR. HEEREN: Now could we please put up, side by
20 side, Government's Exhibit 317.

21 (Exhibit published.)

22 MR. HEEREN: And if we could please call out, on
23 page 3, the entry at 1:03 p.m. And then if you could also
24 blow up the top-most of the last three messages on the
25 left-hand side.

Tarkin - Direct - Heeren

1 Q So what time was the message in Government's Exhibit
2 805-B sent at that we're seeing here?

3 A 12:58 p.m.

4 Q And on what date?

5 A April 6, 2017.

6 A And then looking at the entry that we've highlighted in
7 Government's Exhibit 317, can you please tell us, what time
8 was that phone call made, and date?

9 A 1:03 p.m. on April 6, 2017.

10 Q So that's five minutes later?

11 A Yes.

12 Q And who is the call to and from?

13 A It's an incoming call from McMahon, 9144509169, to Zhu
14 Feng, 9173485950.

15 A And I can show you the header, but is the duration
16 2 minutes and 38 seconds, according to Government's
17 Exhibit 317?

18 A Yes.

19 Q All right.

20 MR. HEEREN: You can close the side by side.

21 I'm going to Government's Exhibit 805-B, which is in
22 evidence, at page 4.

23 Q Could you please read the right side of 805-B, and I'll
24 read the left side of just this page, Mr. Tarkin?

25 A Yes.

Tarkin - Direct - Heeren

1 April 6, 2017, 1: 18 p.m. MC, can you send some pic
2 of subject?

3 Q It happened so fast. Could only take photos of his
4 vehicle. I saw his face and think it's him.

5 A That's okay. I understand. Send me the pic of the car
6 and model. They are waiting. MC, did you see the gray
7 Mercedes GL at yard.

8 Q Yes.

9 A I just drove by. Is that the car he drove in?

10 Q He's on RT 78.

11 A Got it. Toward west or east? Just track him down. Keep
12 me update when you are available.

13 Q West.

14 Okay. Before we close it out, Mr. Tarkin, what time
15 did these messages start at again?

16 A 1:18 p.m.

17 Q And what time do these messages end?

18 A 3:00 p.m.

19 Q Okay. Now I want to direct your attention to what's been
20 previously marked for identification only as Government's
21 Exhibit 4018.

22 MR. HEEREN: We would move to admit Government's
23 Exhibit 4018 pursuant to stipulation.

24 MR. LUSTBERG: No objection.

25 MS. WONG: No objection.

Tarkin - Direct - Heeren

1 MR. TUNG: No objection.

2 THE COURT: Admitted.

3 (Government Exhibit 4018, was received in evidence.)

4 THE COURT: You may publish.

5 (Exhibit published.)

6 Q Do you see Government's Exhibit 4018, Mr. Tarkin?

7 A Yes.

8 Q Who is this from, according to 4018?

9 A Mike McMahon, McMahon74@aol.com.

10 Q And who is this to?

11 A Mike@mcmahoninvestigativegroup.com.

12 Q What's the subject?

13 A China Most Wanted.

14 Q What day and time this was sent?

15 A April 6, 2017, at 1:59 p.m.

16 Q And so is this sent in between the text messages you just
17 read about taking photos of a vehicle and trying to see
18 somebody's face?

19 A Yes.

20 Q Okay. And what is included in this email? What do you
21 see in the body of it?

22 A A URL address.

23 Q And in the www-dot portion, what is the URL? You don't
24 need to read the whole thing.

25 A It's Chinadaily.com.

Tarkin - Direct - Heeren

1 Q Mr. Tarkin, have you tried to access that URL?

2 A Yes.

3 Q And does something come up when you go on to that URL?

4 A Yes.

5 MR. HEEREN: I'd like to show what's marked for
6 identification only as Government's Exhibit 434. Witness and
7 counsel only, please.

8 Q Do you see Government's Exhibit 434?

9 A Yes.

10 Q What is depicted in Government's Exhibit 434?

11 A It's the China Daily article that was in the URL address
12 on the previous email.

13 MR. HEEREN: The Government moves to admit
14 Government's Exhibit 434 into evidence.

15 MR. LUSTBERG: No objection.

16 MS. WONG: No objection.

17 MR. TUNG: No objection.

18 THE COURT: Admitted.

19 (Government Exhibit 434, was received in evidence.)

20 THE COURT: You may publish.

21 (Exhibit published.)

22 MR. HEEREN: And if we could please just blow up the
23 header.

24 Q And, Mr. Tarkin, could you please just read the
25 sub-header into the record, where it begins, It's Called

Tarkin - Direct - Heeren

1 Operation SKYNET--

2 A It's called Operation SKYNET. Amid the nation's
3 intensifying anti-graft campaign, arrest warrants were issued
4 by Interpol China for former state employees and others
5 suspected of a wide range of corrupt practices. China Daily
6 was authorized by the Chinese justice authorities to publish
7 the information below.

8 MR. HEEREN: Could we go back to Government's
9 Exhibit 4011, at page 918.

10 Q Do you see the image at the top of page 918 that was sent
11 in Government's Exhibit 4011?

12 A Yes.

13 Q Does that appear to be a portion of the same article that
14 we just looked at and has been admitted as Government's
15 Exhibit 434?

16 A Yes.

17 MR. HEEREN: We can take that down.

18 And then going to Government's Exhibit 4019-B, at
19 page 122, previously admitted.

20 (Exhibit published.)

21 Q Now, again, just first can we look at the participants?
22 Mr. Tarkin, who are the participants in this message, in this
23 chat thread?

24 A Mike McMahon, 9144509169, and Eric Gallowitz and
25 egallowitz@stuyvesantinvestigative.com.

Tarkin - Direct - Heeren

1 MR. HEEREN: You can close that up, Ms. McMahon.

2 If you can blow up the chat message here.

3 Q And do you see, there's two dates here on this chat
4 message. Do you see the two dates that I marked on the
5 screen?

6 A Yes.

7 Q What date was this message sent?

8 A October 5, 2016.

9 Q So that's about six months prior to the messages we were
10 just looking at?

11 A Yes.

12 Q Does this chat appear to reflect the sending of an
13 attachment?

14 A Yes, it does.

15 MR. HEEREN: Can we go to the next page of the
16 exhibit, please. And blow that up, please.

17 Q Does that attachment appear to reflect the same article
18 that's been admitted as Government's Exhibit 434?

19 A Yes.

20 MR. HEEREN: You can take that down.

21 Now could you please put up, side by side,
22 Government's Exhibit 4018 and Government's Exhibit 3017.

23 Sorry, 317. You can close 3017. My mistake.

24 (Exhibit published.)

25 And can we just please blow up the header in 4018,

Tarkin - Direct - Heeren

1 please.

2 Q Just to reorient ourselves, when was the China Most
3 Wanted email sent?

4 A April 6, 2017, at 1:59 p.m.

5 Q Okay.

6 MR. HEEREN: Ms. McMahon, could you please call out
7 in Government's Exhibit 317 the phone call on 4/6/17 at
8 2:11 p.m.

9 And for the record, it's Government's Exhibit 317
10 that we're looking at side by side with Government's
11 Exhibit 4018.

12 Q So do you see the phone call that's called out from
13 Exhibit 317?

14 A Yes.

15 Q Was that call made approximately 12 minutes after that
16 email was sent?

17 A Yes.

18 Q And who was that phone call between?

19 A It was an incoming call from McMahon, 9144509169, to Zhu
20 Feng at 9173485950.

21 Q And how long was that phone call, according to the chart?

22 A 3 minutes and 20 seconds.

23 MR. HEEREN: You can close up both exhibits, and
24 then please reopen Government's Exhibit 317, which has been
25 previously admitted.

Tarkin - Direct - Heeren

1 (Exhibit published.)

2 MR. HEEREN: And then if you could please call out
3 the calls April 6, 2017, beginning at 3 p.m., to the end of
4 the page.

5 Q So starting at 3 p.m., the first entry, can you please
6 tell us who makes a call here?

7 A On April 6, 2017, at 3:00 p.m., Zhu Feng, using
8 9173485950, makes an outgoing call to Tu Lan at 9173489230.

9 Q And how long is that call for?

10 A Nineteen seconds.

11 Q And then approximately two minutes later, who is there a
12 call between?

13 A It was an incoming call from McMahon, 9144509169, to Zhu
14 Feng, 9173485950.

15 Q And how long is that call?

16 A 2 minutes and 5 seconds.

17 Q And then are there two more calls between Zhu Feng and Tu
18 Lan?

19 A Yes.

20 Q And after that, who are there two calls between?

21 A Between McMahon and Kelly.

22 Q And the first of those two calls, is that at the same
23 time as the -- withdrawn.

24 Is the first phone call between McMahon and Kelly at
25 the same time as the phone call between -- the second phone

Tarkin - Direct - Heeren

1 call between Zhu Feng and Tu Lan?

2 A Yes.

3 THE COURT: Mr. Heeren, could we have a sidebar for
4 a moment with lawyers?

5 (Sidebar.)

6 (Continued on next page.)

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1 (Sidebar conference held outside the presence of the
2 jury.)

3 THE COURT: We have been getting reports from
4 various services about the worsening haze outside, and it says
5 over the next five hours the conditions are supposed to
6 worsen. They closed the clerk's office in both courthouses at
7 3 p.m.

8 I think in fairness to the jury, we should let them
9 get home earlier rather than later. I am going to excuse them
10 and explain that because of what are being reported as the
11 worsening conditions, we want them to get home. I have a
12 slight concern for tomorrow. I don't know how things are
13 going to be, but we still expect them to come in at 9:30. I
14 fear maybe we may get some folks who say they're, I don't
15 know, worried about it, but I hope not.

16 And then as soon as I excuse them, I just want to
17 talk with you folks a little bit about what comes next. Okay?

18 Did you want to say something?

19 MR. HEEREN: If there is going to be an issue on the
20 courthouse's end about starting at 9:30, is there --

21 THE COURT: There's no issue about the courthouse
22 starting. In other words, we will be here. My concern,
23 really, is that we may get jurors who call us. The fact that
24 the clerk's office closed doesn't mean we couldn't continue.
25 We could. It's basically those who aren't needed in

Sidebar

1 courtrooms can go home. But I think it is an indication that
2 the courthouse is worried about the safety of our staff, and
3 I, correspondingly, am a little worried about keeping them
4 here. Quite honestly, it might make people a little annoyed
5 if they find out, when they get home, that there had been all
6 these reports about the increase and the worsening conditions.
7 They've been very cooperative so far.

8 So I want to let them go and make sure they know
9 we're concerned about their health, and I want to talk to you
10 folks a little bit after about trying to move this along.

11 MR. HEEREN: Yes, Your Honor.

12 (Sidebar ends.)

13 (Continued on next page.)
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1 (In open court; jury present.)

2 THE COURT: So, ladies and gentlemen, we have been
3 receiving some reports about the conditions outside, and our
4 understanding, though obviously no one knows for sure, is that
5 the conditions are likely to get a little worse as time goes
6 on. So I'd prefer that we let you all go home now, because I
7 know that some of you have some distance to travel.

8 So we're in agreement now that we're going to let
9 you leave now in hopes that you can get home and obviously
10 stay home, stay inside, and stay safe. But we will resume
11 tomorrow morning at 9:30, hoping, of course, or assuming that
12 the conditions will have gotten better and hopefully the smoke
13 will have cleared some.

14 So have a great night, everyone. Stay safe. Get
15 home quickly. Don't talk about the case, don't do any
16 research, and keep an open mind. We'll see you tomorrow
17 morning at 9:30.

18 THE COURTROOM DEPUTY: All rise.

19 (Jury exits.)

20 THE COURT: You can step down. Thank you very much.

21 (Witness exits the stand.)

22 THE COURT: Have a seat, everyone.

23 So let me say this: For what it's worth, my sense
24 of the jury is that they're very dedicated to seeing the case
25 through, so I don't anticipate that jurors will try to get out

1 of coming back tomorrow or use the smoke as any excuse.

2 But I do want to make an observation, especially in
3 the context that we find ourselves in, which is the
4 conditions, atmospheric conditions are somewhat unpredictable.
5 We, unfortunately, can assume there may be some degree of this
6 smoke with us for several days.

7 And just so you all understand, the report we're
8 getting is that the conditions are supposed to worsen over the
9 next five hours. I didn't want to say that to the jury. I
10 don't want to cause them to panic. But it seems to me keeping
11 them here for another two and a half hours would seem unfair
12 and put them in a worse situation, perhaps unnecessarily.
13 Like I said, I think it is important for the jury to know that
14 we are concerned about their health, just to sort of maintain
15 the good will that I think we have so far with the jury.

16 But I want to suggest to the Government that it
17 seems to me some of the evidence that's coming in through
18 these witnesses were simply reading exhibits into the record,
19 may not be necessary. Because remember, you have all the
20 admitted exhibits to refer to during argument and show during
21 argument when the jury will actually be able to put it all
22 together based on your argument. I think right now,
23 especially given that the jury is somewhat nervous, I think,
24 about how long they're in this courtroom, it may be wise to
25 try to short circuit some of that and just save it for

Proceedings

1 argument, because this witness is not adding anything that you
2 couldn't argue based on just reading the exhibits.

3 And so my concern is that we have spent a fair
4 amount of time with mere, I don't even know what to call them,
5 publishing witnesses who are simply reading records into
6 evidence, and that doesn't make any sense to me because the
7 documents are already in evidence.

8 So that's just a suggestion. Obviously I am not
9 going to tell the Government how to put on its case. But
10 given my concern about finishing the trial on time and the
11 strange weather or atmospheric conditions we find ourselves in
12 and my concern that that may shorten some of our days or may
13 preclude some trial days altogether, depending on how bad it
14 is, I just urge the Government to consider how to shorten the
15 presentation of evidence when it comes to things like this
16 that I don't think need to be read into the record.

17 MR. HEEREN: We understand, and of course we will
18 look to tighten things up, Your Honor.

19 I would just note for the Court that this portion of
20 the circumstances in this case involve the actual surveillance
21 of the victims by a coordinated group of people, and it's
22 relatively complex to tell that story, and it's a series of
23 different individuals all communicating by different methods,
24 some of which more surreptitious than others. While of course
25 we understand and will make appropriate arguments in closing,

1 we're also mindful of not wanting to or likely having the
2 ability to, you know, spend all of that time trying to go
3 through that meticulously.

4 So we will tighten it up, but I just wanted to
5 caution for the Court that it is important for us to make
6 clear who is saying what to who during this compressed period
7 of time.

8 And I would just note, I think it will move faster
9 in the second half because it's just a few -- it's less
10 exhibits. It's only a handful of chats to move back and forth
11 through.

12 THE COURT: But consider this: You have that
13 opportunity now without having a witness read them to the
14 jury. You just simply show them that during your argument and
15 say, here's the chat, follow the story, as opposed to simply
16 having this witness read in what you're going to re-present to
17 them during closing.

18 Some things have to be presented through a witness,
19 obviously, to get them in and to make sense of them. This is
20 simply reading in what I assume you are going to show them
21 again in closing and read to them just in the way this witness
22 is reading them.

23 All I'm saying is it feels like there is some
24 repetition here that may not be necessary, and if there is any
25 way to cut it out so that we could ensure that we finish next

1 week, that would be great.

2 MR. HEEREN: I'm fairly confident we're going to
3 finish next week, Your Honor. And I would just note, I don't
4 think we're going to do a repeat of that in closing. I think
5 that would take many hours, and we don't want to do that, if
6 we went through all those records, if you think about this
7 plus the October time period publication of emails, as well.
8 We don't want to be doing all those all over again, and I
9 think we need to do it at least once so the jurors see what
10 we've admitted. We've been trying to be as efficient as we
11 can be with it.

12 But we entirely understand the Court's concerns.
13 We're going to work on tightening it up.

14 THE COURT: Okay. It is obviously your decision on
15 how to try the case.

16 When you say you're going to finish next week, bear
17 in mind that there is going to be a defense case, at least as
18 we have been alerted. So that is going to consume a couple
19 days, I believe, as well. So just factor that in.

20 So, folks, we'll see you tomorrow at 9:30. We
21 obviously have to have a charge conference. It will probably
22 not happen until early next week at this point, but we will
23 circulate a draft of the instructions this week.

24 MR. HEEREN: And the parties should be here at 9:00
25 still, right, Your Honor?

1 THE COURT: Yes, I think so. I don't want to relax
2 on that because issues always come up, and if the jury gets
3 here at 9:30, we've got to start as soon as they get here.

4 MR. HEEREN: That's our preference, Your Honor.

5 THE COURT: So we'll see you folks at 9:00 tomorrow.

6 Yes, Mr. Lustberg?

7 MR. LUSTBERG: Very quickly, at some point we were
8 talking about Alternate Juror Number 1's gout problem, and I
9 just didn't know whether we were going to deal with that at
10 some point.

11 THE COURT: Yes. I mean, I was intending to today,
12 although he hasn't mentioned it again, and as far as we know
13 right now, he is coming. It may have just been a feint, if
14 you will, to try to see if we would let him off. I don't
15 know.

16 MR. LUSTBERG: I'm fine with that. I just wanted to
17 make it --

18 THE COURT: I considered that. Since we're letting
19 them go early, the issue is at least in abeyance for the
20 moment, or held in abeyance for the moment.

21 So we will see you tomorrow. Get home safe,
22 everybody.

23 MR. LUSTBERG: You too, Judge.

24 MR. HEEREN: Thank you, Judge. You too.

25 (Whereupon, the trial adjourned at 3:15 p.m.)

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